SUPREME COURT, U.S.
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No. 374

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED APR 15 1957
Joseph W. Stewart
CLERK

No. 13,647

WM. H. WISE COMPANY, INC.
THE CHARMING WOMAN, INC.
JOHN J. CRAWLEY,
individually and as an officer of said corporations

Petitioners,

v.

FEDERAL TRADE COMMISSION

Respondent.

PETITION TO REVIEW ORDER OF FEDERAL TRADE COMMISSION

THOMAS B. SCOTT,
LAWRENCE J. SIMMONS
716 Evans Building
Washington 5, D.C.
Attorneys for Petitioners

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JOINT APPENDIX

[Filed December 31, 1956]

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

In the Matter of:	)	
Wm. H. Wise Company, Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, Individually and as an officer of said corporations,	)	
Petitioners	)	
vs.	)	No. 13,647
Federal Trade Commission,	)	
Respondent.	)	

Federal Trade Commission Docket No. 6288

PETITION TO REVIEW ORDER OF THE FEDERAL TRADE COMMISSION

To the Honorable the Judges of the United States Court of Appeals for the District of Columbia Circuit:

Your petitioners, Wm. H Wise Company, Inc., a corporation, The Charming Woman, Inc., a corporation and John J. Crawley, individually and as an officer of said corporations, respectfully present their petition for a review of the order of the Federal Trade Commission entered on the 1st day of November, 1956, and served on petitioners on the 13th day of November, 1956, Docket No. 6288, wherein your petitioners were ordered to cease and desist from certain acts and practices alleged to be unfair within the meaning of the Federal Trade

Commission Act of 1914, as amended by the Act of March 21, 1938 (38 Stat. 717; 15 U.S.C.A. Sec. 41 et seq., 52 Stat 111), and respectfully show:

I.

This petition is filed in this Court pursuant to Section 5 (c) of the Act of March 21, 1938 (52 Stat. 111, Title 15 U.S.C.A. Sec. 45 (c)) and Rule 38 of this Court.

II.

Petitioner John J. Crawley is an individual doing business under the authorized trade name of Publishers Protective Service in the State of New York, the District of Columbia and elsewhere. Petitioners Wm. H. Wise Company, Inc. and The Charming Woman, Inc., were and are corporations duly organized and existing under the laws of the State of New York, with their principal offices in the City of New York, State of New York and doing business in the State of New York, the District of Columbia and elsewhere.

III.

Said Order of the Federal Trade Commission was issued following a Complaint by the Commission against petitioners, the filing of an Answer, the taking of testimony and submission of evidence before a Trial Examiner duly designated by the Commission for such purpose, as to paragraph Seven of the Complaint only, the filing of briefs by attorneys for the Commission and attorney for Respondents, Request for leave to file Interlocutory Appeal from Orders Overruling Respondents' Motion to Dismiss etc., denied by the Commission, and Oral Argument before the Commission on Appeal from Examiner's Initial Decision. Said Order reads as follows:

> 'IT IS ORDERED that respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and their officers; and John J. Crawley, individually and as an officer of said corporations and the respondents' agents, representatives and employees, directly or through any corporate

or other device, in connection with the offering for sale, sale or distribution, in commerce as 'commerce' is defined in the Federal Trade Commission Act, of a course of instruction in beauty culture, or any courses of study or instruction, or any other product, do forthwith cease and desist from:

1. Using fictitiously any trade or corporate Name in collecting past-due accounts;
2. Implying that such fictitious collection agency is an independent organization engaged in the business of collecting past-due accounts."

Attached to and a part of said Order are findings of the Commission as to the facts, followed by a conclusion to the effect that in the respects found Respondents had violated and are violating the provisions of said Federal Trade Commission Act.

IV.

(a) That the said Order of the Commission is improper, invalid and beyond the power, jurisdiction or authority of the Federal Trade Commission.

(b) Said Findings and Order of the Commission are not supported by or based upon any substantial, credible evidence and the entering of said Order was an arbitrary and capricious action in deprivation of petitioners' rights and guaranties to due process of law under the Fifth Amendment to the Constitution of the United States.

(c) That the said Order is not supported by the Findings of the Commission but on the contrary the said Findings support a dismissal of the complaint.

(d) That the said Order goes further than is reasonably necessary to correct, if there were evils, and bear no reasonable relation to, the evils complained of and found to exist by said Federal Trade Commission in this matter.

(e) The said Order is lacking in definiteness and specificity, and being too broad, is invalid.

WHEREFORE Your Petitioners Pray:

1. That the aforesaid Order of the Federal Trade Commission be reviewed by this Honorable Court; and upon such review the said Order of the Federal Trade Commission entered in its Docket No. 6288 against petitioners be set aside or modified in whole, or in part, as may appear just to this Honorable Court.

2. And for such other, further and alternate relief as to this Court may seem just and meet.

/s/ Thomas B Scott
Counsel for Petitioners

* * * *

[Filed February 27, 1957]

PREHEARING ORDER

Counsel for the parties in the above-entitled case having appeared before Circuit Judge Danaher for prehearing conference pursuant to Rule 38 (k) of the General Rules of this Court, at which time it appeared that counsel have found it impossible to agree upon simplification of the issues further than to advise the Court that each had tentatively prepared a statement of the respective claims as to the issues each desire to present, and such statements having been submitted and considered, now in the interest of limiting the issues as closely as possible to the claims as therein contained the same are herein set forth as follows:

The petitioners state the issues as they now plan to present them to be as will appear from the petitioners' prehearing statement filed herein and attached hereto;

And it further appearing that the respondent states the issues as it now plans to present them to be as will appear from the respondent's prehearing statement filed herein and attached hereto;

And finding that the respective parties are unable further to agree, the said prehearing statements are hereby approved, subject however to the petitioners' restatement of the issues as they will appear in their brief, to be served and filed in typewritten or mimeograph form in accordance with Rule 18 (d), as soon as possible, and in any event, in printed or multilith form not later than April 15, 1957, whereupon the respondent shall be free to meet the issues as claimed by the petitioners and to restate in the respondent's brief its own understanding of the issues; respondent's brief to be served and filed in typewritten or mimeograph form in accordance with Rule 18 (d) as soon as possible, and in any event in printed or multilith form not later than twenty-five days from the date of service of the petitioners' brief, and otherwise as will more particularly hereinafter be set forth.

Upon consideration of the representations of petitioners' counsel as to the time needed for filing its brief and the agreement of respondent's counsel to accommodate himself to the schedule hereinafter prescribed, it is

ORDERED that the time for filing briefs, in form as above, and joint appendix of the parties be, and it is hereby, fixed as follows:

Petitioner's brief and joint appendix shall be filed on or before April 15, 1957.

Respondent's brief shall be filed within twenty-five days from the date of service of petitioners' brief.

Petitioner's reply brief, if any, shall be filed within ten days from the date of service of respondent's brief.

And it further appearing that the parties have agreed that it will not be necessary to print the entire record in support of paragraph 5 of petitioners' prehearing statement attached hereto, and that petitioners' counsel will promptly furnish respondent with a statement of the parts of the record he deems necessary, in any event is not to exceed ten days, and that respondent's counsel will, within five days thereafter, furnish petitioners with a statement of the parts of the record as he

deems necessary, other portions of the record as designated by petitioners' counsel appearing from his prehearing statement attached hereto, with the privilege reserved to the respondent to designate such supplemental material as may be necessary, it is ORDERED that such a plan be, and it is hereby, approved.

It further appearing that petitioners' counsel insists that the issues before the hearing examiner and the Commission were limited to matter set forth in paragraph 7 of the complaint, and that all portions of a certain stipulation entered into by the parties prior to the hearing before the Commission, are irrelevant in this Court, whereas respondent's counsel insists that he is entitled to make reference to said stipulation, it is ORDERED that petitioners, after consideration of such references to said stipulation as may be made by respondent's counsel, will be privileged to move to strike same and, in its brief to demonstrate the reasons why such references are claimed to be improper.

It is FURTHER ORDERED that in the interest of reducing costs, this order and the attached prehearing statements be filed without printing in the joint appendix, but with the understanding that the respective parties may make such reference thereto, in brief or otherwise, as may be desired, the clerk to supply copies hereof to the judges who constitute the division before which the case shall be heard.

Dated: February 27, 1957

[Filed January 26, 1955]

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
WM. H. WISE CO., INC.,	)	
a corporation,	)	
THE CHARMING WOMAN, INC.,	)	Docket No. 6288
a corporation, and	)	
JOHN J. CRAWLEY, individually	)	
and as an officer of said corporations.	)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, individually and as an officer of said corporations, hereinafter called respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH ONE: Wm. H. Wise Co., Inc., is a corporation duly organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 50 West 47th Street, in the City and State of New York. The Charming Woman, Inc., is a corporation duly organized, existing and doing business under the laws of the State of New York and a wholly owned subsidiary of said Wm. H. Wise Co., Inc., with its principal office and place of business at 37 West 47th Street, in the City and State of New York. John J. Crawley is an individual and President of said corporations and this individual formulates, controls and manages all of the policies

of said corporations. His principal office and place of business is the same as that of Wm. H. Wise Co., Inc.

PARAGRAPH TWO: For more than two years last past respondent, The Charming Woman, Inc., has been engaged in the sale and distribution of a course of instruction in beauty care which said course was

3 pursued by correspondence through the United States mails. Said respondent, in the conduct of said business, caused said course to be transported from its said place of business in the State of New York to purchasers thereof located in states other than the State of New York. There has been at all times mentioned herein a substantial course of trade in said course of instruction so sold and distributed by said respondent in commerce.

PARAGRAPH THREE: In connection with the sale of said course respondent, The Charming Woman, Inc., has made use of printed advertising material which was distributed to members of the purchasing public throughout the United States by means of the United States mails, in and by which numerous statements have been made with respect to the terms and conditions of purchase of said course of instruction. Such prospective purchasers received an envelope containing a printed form letter, a circular and a "Charter Enrollment Card". Said card is as follows:

"CHARTER ENROLLMENT CARD
MAIL TODAY IN REPLY ENVELOPE THAT NEEDS NO STAMP
MAIL NOW! WITH ONLY 25¢ FOR YOUR FIRST 10 DAILY LESSONS

THE CHARMING WOMAN, Inc.
37 West 47th Street, New York 19, N. Y.

For the enclosed Special Introductory Price of only 25¢, please send me prepaid the first Group of 10 Daily Illustrated Lessons containing the starting foundation for the Course in Beauty, Charm, and Successful Living for Women--and enroll me for 3 months.

You may send me further Groups of 10 Lessons every 10 days, giving me 30 Daily Lessons each month at the rate

of only $2 a month, until I give you notice to cancel my enrollment. For convenience in bookkeeping, you may bill me once a month for such lessons as I receive.

FREE: Personal Analysis Guide will be sent me WITHOUT CHARGE.

It is understood that I may cancel at any time and pay only for Lesson-Groups actually received.

4 Miss
Mrs. _____ INSERT
(Please print in BLOCK LETTERS) 25¢
Address _____ UNDER
POINTS
City &
Zone _____

NO OBLIGATION TO CONTINUE--STOP WHEN YOU WISH!

Said form letter and circular, in addition to detailed information with respect to the merits of said course, contain various representations regarding the introductory offer of sale. Typical but not all inclusive of such representations are the following:

"1. Only 25¢ to start - Cancel Whenver You Like . . . The special Introductory price of only 25¢ brings you your first 10 day group of fascinating daily lessons! . . ."

"2. Cancel Any Time Without Further Obligation."

"5. Cost Slashed in Half! Every ten days you will receive another group of 10 daily picturized lessons, exciting, interesting, inspiring! . . . for convenience in bookkeeping you will be billed at the old low rate of only $2.00 monthly - Slashing the cost to virtually Half that paid by over 50,000 delighted subscribers! "

"6. Stop Whenever You Like! Pay only for lesson groups you have received. There's never any obligation to continue."

"Only 25¢ to Start - Stop Whenever You Like"

"There's really no decision to make now. All you do now is send 25¢ for the wonderful group of 10 Trial Lessons by those famous specialists.

. . . . .

"Then you can decide whether or not you want to continue."

"Just imagine. . . Only 25¢ for first 10 thrilling daily lessons - Stop Whenever You Like! "

"If you are more than delighted with your immediate and continuous improvement, you may let the lesson-Groups continue to come to you three times a month, receiving 30 exciting Daily Lessons monthly, and completing the entire course in 3 short months. For convenience in bookkeeping you will be billed at the rate of $2.00 monthly, only for those Lesson Groups you have received."

PARAGRAPH FOUR: By means of the foregoing statements and others similar thereto but not specifically set out herein, respondents have represented and implied that on payment of twenty-five cents, purchasers will receive ten trial lessons of a course in beauty, charm and successful living; that the invitation to mail 25¢ constitutes only a trial offer, the ten lessons being in the nature of a sample, and that the decision to enroll for said course rests entirely with the prospect and that such decision may be made at a later date; that in accepting said 25¢ trial offer, such purchasers incur no other obligations and need not continue with said course unless they specifically indicate a desire to do so; and that additional lessons in groups of ten lessons may be purchased at a monthly rate of two dollars and a total cost of six dollars.

PARAGRAPH FIVE: The foregoing representations and implications are grossly deceptive and misleading. In truth and in fact, persons who sign said Enrollment Card enter into an agreement with respondents to purchase the entire course of instruction for a total price of $6.00 payable in three monthly installments of $2.00 each, unless notice of

cancellation is specifically given to said respondent.

Throughout said advertising literature respondents emphasize the fact that 10 sample lessons may be obtained by paying 25¢ and that the decision of whether or not additional groups of lessons are to be purchased rests entirely with the purchaser.

PARAGRAPH SIX: As a rule, members of the purchasing public do not read or analyze carefully any printed advertising material which is received by them through the mails; and there has been a substantial number of such members who on receipt of respondents' said advertising material mailed the sum of twenty-five cents to said respondent under the definite impression that said offer of ten lessons for twenty-five cents was in the nature of a sample or trial offer and that they would not be obligated for any further payments unless they expressly advised respondents to that effect. The fact that said agreement to purchase the full course is placed inconspicuously, and in finc print on a card containing illustrations, advertising matter and testimonials and that the invitation to mail only 25¢ appears conspicuously and in bold type

6 strengthened the belief in the minds of the purchasing public that said card merely offered an opportunity to buy a set of trail lessons for the nominal price of only 25¢. Said impression and belief are heightened and confirmed by the representations made in said form letter and circular as set forth in Paragraph Three hereof, which are also prominently displayed and reiterated, while the fact that persons sending in 25¢ to said respondent will be subsequently billed at the rate of $2.00 a month for three months is set forth once, in small type and in an inconspicuous place in material containing many illustrations and detailed descriptions of the various phases of said course of instruction.

In some instances, said respondent had continued mailing said lessons after being notified by the person sending in the initial amount of 25¢ to discontinue sending additional lessons; and thereafter has demanded payment in full for said course, in spite of being again advised of such cancellation and contrary to the express representation that

purchasers were under no obligation to continue said course.

PARAGRAPH SEVEN: In the course and conduct of said business as aforesaid, respondents have adopted and use a fictitious trade name, to wit, Publishers Protective Service, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Publishers Protective Service is an independent and separate organization employed to collect accounts which are in arrears.

In truth and in fact said fictitious collection agency is operated solely by respondent John J. Crawley and is used by respondents to coerce and intimidate purchasers of said course of instruction, as well as persons who have cancelled orders therefor, and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged.

PARAGRAPH EIGHT: The use by respondents of the statements and representations aforesaid has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true and to induce them to purchase said course of instruction in said commerce on account thereof.

PARAGRAPH NINE: The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

7 WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 17th day of January, A.D., 1955, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, individually and as an officer of said corporations, respondents herein,

that the 15th day of March, A.D., 1955, at 10 o'clock is hereby fixed as the time and Federal Trade Commission Office, United States Court House, Foley Square, New York, New York as the place when and where a hearing will be had before Everett F. Haycraft, hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondents desire to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondents admit all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondents may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and placed fixed for hearing shall be deemed to authorize the Commission and Hearing Examiner Everett F. Haycraft,

8 without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding:

IT IS ORDERED that respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and their officers, and John J. Crawley, individually and as an officer of said corporations, and the respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, in commerce as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction in beauty culture, or any similar courses of study and instruction, do forthwith cease and desist from:

1. Failing to disclose clearly and adequately on enrollment cards and in other advertising material that by signing and returning the enrollment card or any similar document, the purchaser or subscriber is, in fact enrolling for the entire course and that if the purchaser or subscriber desires to discontinue said course he must give notice to respondents to cancel his enrollment.
2. Collecting, or attempting to collect, payment for lessons and other instruction material sent to persons after they have notified respondents to cancel their enrollment.
3. Using fictitiously any trade name in collecting past-due accounts and implying that such fictitious collection agency is an independent organization engaged in the business of collecting past-due accounts.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 15th day of March, A. D., 1955, why such order should not issue.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D.C., this 17th day of January, A.D., 1955.

By the Commission.

/s/ Robert M. Parrish,
Secretary.

[Received February 15, 1955]

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ANSWER

Now come Wm. H. Wise Company, Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, individually and as an officer of said corporations; by their attorney, Thomas B. Scott, and for an answer to the complaint herein states as follows:

Paragraph One: Respondents admit the allegations contained in Paragraph One of the Complaint.

Paragraph Two: Respondents admit the allegations contained in Paragraph Two of the Complaint.

Paragraph Three: Respondents admit the allegations of Paragraph Three of the Complaint but allege that the statements quoted from the letter and circular are taken out of context and do not properly set forth the offer made by the said letter and circular as an inducement to enroll in said course.

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Paragraph Four: Respondents deny each and every allegation of Paragraphs Four, Five and Six of the Complaint herein. Respondents allege that the letter, circular and order or enrollment card clearly indicate to prospective purchasers that they are agreeing to enroll for the entire course described therein; that for twenty-five cents they may receive the first ten daily lessons and that they have the right after examining said lessons to cancel the course at any time paying only for lesson groups actually received. Respondents further allege that they have mailed several million circulars, letters and enrollment cards to members of the purchasing public and that approximately one hundred thousand courses of instruction have been sold as a result of such mailings; that whereas there may have been some members of the purchasing public who have misunderstood the statements made in respondents' advertising material, the number thereof has not been "substantial" when compared with the thousands who have received said advertising material and have enrolled for lessons.

Paragraph Five: Respondents deny each and every allegation contained in paragraph Seven of the Complaint but allege that on December 28, 1935, Mr. John J. Crawley signed a certificate declaring his intention to conduct a collection business in New York City under the name of Publishers' Protective Service; that Certificate No. 50799 was issued by the County Clerk, New York County, certifying
11 that the original certificate of conducting business was filed in his office December 31, 1935 under file No. 13962-1935; that since said registration Publishers' Protective Service has been used to collect delinquent accounts of Respondent corporations.

Paragraph Six: Respondents deny each and every allegation contained in Paragraph Eight of the Complaint.

Paragraph Seven: Respondents deny each and every allegation contained in Paragraph Nine of the Complaint.

Wherefore, Respondents pray that the Complaint herein be dismissed and an appropriate order entered.

/s/ Thomas B. Scott
Attorney for Respondents

* * * *

[Received Hearing Examiners June 3, 1955]

23 STIPULATION FOR CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between Wm. H. Wise Co., Inc., a corporation; The Charming Woman, Inc., a corporation; The Charming Woman, Inc., a corporation; and John J. Crawley, individually and as an officer of said corporations, hereinafter called the respondents, and their duly authorized attorney, and William R. Tincher, Counsel Supporting the Complaint, subject to approval by the Assistant Director and the Director, Bureau of Litigation, Federal

Trade Commission, that:

1. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 17, 1955, issued its complaint in this proceeding against the respondents. A true copy of said complaint was thereafter duly served by registered mail on respondents.

2. Respondents are now and have been at all times mentioned herein a corporation with its principal office and place of business located at 50 West 47th Street, in the city and State of New York, a corporation with its principal office and place of business located at 37 West 47th Street, in the city and State of New York, and an individual and President of said corporations having the same principal office and place of business as Wm. H. Wise Co., Inc.

3. Respondents admit all the jurisdictional allegations set forth in the complaint and stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have engaged in any method, act or practice violative of law.

4. It is stipulated and agreed that Paragraph Seven of the aforementioned complaint in matter is excluded from consideration in this stipulation and the allegations made in said Paragraph and the answer to said allegations in respondents' formal answer of record in this matter, are not intended to be and are not included in this stipulation. The issues joined by the aforesaid Paragraph Seven shall remain for decision in regular course and shall not be affected, modified or altered by this stipulation.

5. All parties hereto expressly waive the filing of answer, a hearing before a hearing examiner or the Commission and making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing

examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents agree that the order hereinafter provided for shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waive any and all right, power, or privilege to challenge or contest the validity of the order entered in accordance with this stipulation. None of the matters waived in this paragraph shall apply to the reservation expressed in Paragraph 4 of this stipulation.

6. It is stipulated and agreed that this stipulation, together with the complaint, shall constitute the entire record herein, with the exception of further proceedings in regular course as reserved in Paragraph 4 of this stipulation, and shall be filed with the hearing examiner for his consideration in accordance with Rule V of the Commission's Rules of Practice.

7. It is further stipulated and agreed that the following order may be entered in the partial disposition of this proceeding upon the record herein and without further notice.

IT IS ORDERED that respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and their officers, and John J. Crawley, individually and as an officer of said corporations, and the respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, in commerce as "commerce" is defined in the Federal Trade Commission Act, [of a course of instruction in beauty culture, or any similar courses of study and instruction,] do forthwith cease and desist from:

1. Failing to disclose clearly and adequately on enrollment cards and in other advertising material that by signing and returning the enrollment card or any similar document, the purchaser or subscriber is, in fact enrolling for the entire course and that if the purchaser or subscriber desires to discontinue said course he must give

notice to respondents to cancel his enrollment.

2. Collecting, or attempting to collect, payment for lessons and other instruction material sent to persons after they have notified respondents to cancel their enrollment; provided, however, that upon a satisfactory showing by respondents that said collection or collection attempt results solely and exclusively from a normal and reasonable delay occasioned by the failure of the person cancelling his enrollment to include in his notice of cancellation the number assigned his account by respondents, this paragraph shall not be applicable.

8. It is further stipulated and agreed that the complaint herein may be used in construing the terms of the aforesaid order which may be altered, modified, or set aside in the manner provided by the statute for the orders of the Commission.

9. It is further stipulated and agreed that this stipulation is subject to approval in accordance with Rules V and XXII of the Commission's Rules of Practice, and that said order shall have no force and effect unless and until it becomes the order of the Commission.

Signed this 3rd day of June, A. D., 1955.

Wm. H. Wise Co., Inc.
By /s/ John J. Crawley, President.

The Charming Woman, Inc.
/s/ John J. Crawley, President.

APPROVED:

/s/ Joseph E. Sheehy
Director,
Bureau of Litigation.

/s/ John J. Crawley

/s/ Thomas Barrett Scott
Attorney for Respondents.

/s/ William R. Tincher
Counsel Supporting Complaint

[Received FTC, October 19, 1955]

68 **ORDER ADMITTING COMMISSION'S EXHIBITS NOS. 4 AND 5 IN EVIDENCE**

During the session of the initial hearing of this proceeding held at New York, New York, on June 28, 1955, counsel supporting the complaint offered in evidence certain documents identified as Commission's Exhibits 4 and 5, to which respondents made objection upon which matter the undersigned hearing examiner reserved ruling. (Official Report of Proceedings, 6288-5-2-1, pp. 13-15.) Upon due consideration, and noting respondents' exception to this ruling,

IT IS ORDERED that the respondents' said objections are overruled and that Commission's Exhibits Nos. 4 and 5 is each respectively received in evidence and the Official Reporter is hereby instructed to make the same a part of the Official Report of the Proceedings, Commission's Exhibits 4 and 5, respectively.

/s/ Loren H. Laughlin,
Hearing Examiner.

October 18, 1955

[Received in Conference, February 12, 1954] EXHIBIT NO. 1

105 STATE OF NEW YORK,)
COUNTY OF NEW YORK,) ss.:
)

I, JOHN J. CRAWLEY, residing at 23 Shawnee Road, Scarsdale, New York DO HEREBY CERTIFY:

That I am over twenty-one years of age, and that I intend to conduct or transact the business of carrying on a collection agency at 50 West 47th Street, in the County of New York and State of New York under the name of PUBLISHERS' PROTECTIVE SERVICE, and that the true or

real full name of the person conducting or transacting such business with the Post Office Address of said person is as follows:

Name	Post Office Address
John J. Crawley	50 West 47th Street Borough of Manhattan City of New York

Dated, New York

/s/ John J. Crawley

EXHIBIT No. 2

[Received in Conference, February 1, 1954]

STATE OF NEW YORK,)
COUNTY OF NEW YORK) ss.:

On this 28th day of December 1955 before me personally came John J. Crawley, of

Scarsdale, New York to me known and known to me to be the individual described in and who executed the foregoing certificate, and he duly acknowledge to me that he executed the same.

/s/ Wm. Kuebler
Notary Public, Queens County

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EXHIBIT No. 3

PUBLISHERS' PROTECTIVE SERVICE
Credit Investigations and Collections of Delinquent Accounts

Department of Investigations

NOTICE:

A duplicate statement of your account is enclosed herewith. We have been instructed to take any necessary steps to effect collection.

Our clients state that some time ago you entered into a definite agreement to make regular monthly payments for merchandise which they furnished you in good faith but that you still owe them the long overdue amount shown.

Our clients further state that you have been given every opportunity to pay this honest debt. They are convinced that you do not intend to pay unless you are sued in court. They are planning on retaining counsel to handle this case for them.

Before we proceed further, we are going to get up-to-date information on you, including your exact present address, your place of employment, amount of salary, and amount of your real and personal property. Do you know that court costs, interest charges, and attorney fees must be paid by the person against whom judgment is rendered? Legal action against you may result in considerable additional expense to you. If you doubt this statement, we suggest that you consult your attorney.

In order that you may avoid unnecessary publicity and expense, we urge you to send your payment today in the enclosed envelope.

Very truly yours,
PUBLISHERS' PROTECTIVE SERVICE
/s/ J. M. Leahy
Manager

BE SURE TO RETURN THE ENCLOSED BILL WITH YOUR PAYMENT FOR PROMPT IDENTIFICATION AND CREDIT.

IF PAYMENT HAS BEEN MADE DIRECT TO OUR CLIENT WITHIN THE PAST TWO WEEKS, PLEASE DISREGARD THIS NOTICE.

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107 EXHIBIT No. 4

WM. H. WISE & CO.
Incorporated
50 West 47th Street . New York 36, N. Y.

FINAL NOTICE

Dear Friend:

Placing any account with a collection agency is about as unpleasant a thing as we can think of. It had been our impression that it would never be necessary to take such action with YOUR account.

Must we take such action to collect this small debt?

We want to keep your name on our preferred list and sincerely hope you will do your part towards maintaining pleasant relations with us by sending your remittance today for the full amount of your past due account.

Sincerely,
/s/ F. A. Daly
General Credit Manager

FAD/DA

"IT IS OUR DESIRE TO SERVE YOU. NOT DUN YOU."

BE SURE TO RETURN THE STATEMENT WITH YOUR PAYMENT

IF PAYMENT HAS BEEN MADE WITHIN THE PAST TWO WEEKS, PLEASE DISREGARD AND EXCUSE THIS NOTICE.

EXHIBIT No. 5

WM. H. WISE & CO.
50 West 47th Street,
New York 19, N.Y.

Dear Friend:

Placing your account in the hands of an outside Department for collection is about as unpleasant a thing as we can think of.

It has always been our impression that your account was above it and we still feel that it will never be necessary to take such action.

We want to keep your name on our preferred list and sincerely hope you will do your part towards maintaining pleasant relations with us by sending your remittance today for the full amount of your past due account.

Sincerely,
/s/ M. F. Reilly
General Credit Manager

"IT IS OUR DESIRE TO SERVE YOU. NOT DUN YOU."
BE SURE TO RETURN THE STATEMENT WITH YOUR PAYMENT

IF PAYMENT HAS BEEN MADE WITHIN THE PAST TWO WEEKS, PLEASE DISREGARD AND EXCUSE THIS NOTICE.

 [Federal Trade Commission, Rec'd May 29, 1956, Secretary]

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
WM. H. WISE CO., INC., a corporation,	)	
THE CHARMING WOMAN, INC., a corporation, and	)	DOCKET NO. 6288
JOHN J. CRAWLEY, individually and as an officer of said corporations.	)	

INITIAL DECISION

Before: Loren H. Laughlin, Hearing Examiner.

Appearances: William Tincher,
Counsel supporting the complaint.

Thomas B. Scott, Attorney for respondents,
1420 New York Avenue, N.W.,
Washington, D. C.

The complaint in this proceeding alleges violations of the Federal Trade Commission Act, in that in substance said respondents have employed the device of a fictitious trade name, "Publishers' Protective Service" for the purpose of collecting in the course of interstate commerce allegedly delinquent accounts due to the two corporate respondents. It is established without dispute between the parties that said "Publishers' Protective Service" is in fact entirely owned and operated by the respondent John J. Crawley, who is registered under the said trade name as a collection agency in New York City. It is also undisputed that he is the president of each of the two respondent corporations, and the officer thereof who formulates, controls and manages all of their business policies. It is alleged in the complaint, however, that the use of this fictitious trade name by respondents does in fact deceive and mislead and also tends to deceive and mislead the public into believing that said "Publishers' Protective Service" is an entirely independent and separate or-

168 ganization from that of the corporate respondents and is employed by them as such a separate organization to collect their accounts.

This initial decision finds generally that the facts alleged in the complaint which are material to this case have been proved by a preponderance of the evidence by counsel supporting the complaint, with the single qualification that the debts sought to be collected by respondents through the use of said fictitious trade name "Publishers' Protective Service" are not merely alleged accounts due respondents as claimed in the complaint, but are in fact, to all material substance and effect, lawful, just and demandable debts due to respondent corporations. It is held herein, however, that respondents' said methods of collection are unfair and deceptive acts and practices prohibited by the Federal Trade Commission Act, Section 5 (a) 1), and that they are not purged of their unlawful character either because the debts are valid, or because the fictitious name "Publishers' Protective Service" is a trade name duly registered as such by the respondent Crawley under Section 440 of the Penal Laws of New York State.

This proceeding originally included certain charges that the corporate respondent, The Charming Woman, Inc., had deceived and misled the public by certain advertising of courses of instruction in beauty care which said respondent prepared and published for sale. Such matters were alleged in Paragraphs Two to Six, inclusive, of the complaint. Those issues were fully adjudicated by the hearing examiner's initial decision and order dated June 30, 1955, upon a consent order settlement, as authorized by Section 3.25 of the Commission's current Rules of Practice for Adjudicative Proceedings, effective on and after May 21, 1955. Said Initial decision was fully approved and adopted as the decision and order of the Commission on August 22, 1955, and thereby became final and effective on that date as provided by said section of the Rules. Since respondents in such consent order proceeding stated that they admitted no violation of law in consenting to the said decisions and orders, as they are fully authorized to do by subsection (b) of said Section 3.25 of the Rules, none of such issues so adjudicated by consent order have been litigated in this proceeding, nor are they considered any way in determining the findings of fact, conclusions of law and order which are set

forth herein.

169 The complaint in this proceeding was issued on January 17, 1955. Respondents' answer was filed February 15, 1955. On April 25, 1955, the case was assigned to the undersigned hearing examiner for hearing. Thereafter, the parties negotiated and entered into the consent order settlement covering most of the issues in the case as hereinabove recited. Trial on only the disputed issues began June 28, 1955, and counsel supporting the complaint completed his evidence and a motion to dismiss the complaint on numerous grounds was made on the record that same day by respondents. Thereafter the law and facts were extensively and ably presented and briefed pro and con by the respective counsel for the parties. Such motion was denied by the examiner on October 24, 1955, and respondent appealed therefrom to the Commission. As the Commission's order denying such interlocutory appeal was not entered until December 27, 1955, this had the necessary effect of postponing the hearing of respondents' defense until February 15, 1956. At the close of respondents' evidence, their motion to dismiss the complaint was renewed. Both hearings were held in New York, New York, and the evidence consists solely of the testimony of the respondent John J. Crawley, and the Commission's exhibits which were received in evidence at the first hearing. The record testimony of this sole witness is comparatively brief and the findings of fact herein made are based thereon, including the reasonable and fair inferences arising therefrom.

The only issues of fact which were actually contested are raised by Paragraph Seven of the complaint and Paragraph Five of the answer. Said paragraph of the complaint, in substance, charges that the respondents have adopted and used the said fictitious trade name "Publishers' Protective Service" in the collection of their accounts, thereby representing and implying that such fictitious trade name is an independent and separate organization from respondents, whereas in fact it is the name under which respondent Crawley operates and which is used by respondents to coerce and intimidate debtors of respondent, as well as persons who have cancelled their subscriptions to respondents' publications.

Respondents have denied all such allegations and allege and claim, in substance, that ever since December 28, 1835, respondent Crawley has lawfully conducted a collection business under the name of "Publishers' Protective Service" under certificate duly issued to him under the authority of Section 440 of the Penal Laws of New York by the County Clerk of New York County, New York. Respondents therefore admit that said "Publishers' Protective Service" has since been used to collect the delinquent accounts of respondent corporations.

170 While the detailed findings of fact hereinafter set forth cover the basic facts as found by the examiner, it is necessary at this time to discuss certain evidence in some detail in order to show most clearly the application of the guiding principles of law thereto.

The gist of the Commission's case in support of the complaint is that the respondents in the process of collecting accounts due them use a series of letters under the said fictitious trade name of "Publishers' Protective Service" used by the respondent Crawley. The evidence shows that each of the corporate respondents originally sends out to its debtors on its own letterhead and address a series of collection letters. There is no evidence that these letters contain any harsh or threatening language. If this earlier series of collection letters fails to effect satisfactory results, then said respondents each use a series of letters which they send out in the United States mails under the fictitious name of "Publishers' Protective Service." None of the earlier collection letters used by the respondent, The Charming Woman, Inc., were received in evidence, although Commission's Exhibits 4 and 5 sent out as collection letters by respondent Wm. H. Wise Co., Inc., appear in the record. They are certainly binding on that respondent and while its wholly-owned subsidiary, The Charming Woman, Inc., may not have used an identical series of letters, this is not a material failure of proof on the part of counsel supporting the complaint, inasmuch as it is undisputed that both corporations use the letters which are sent out to debtors under the fictitious name and masthead of "Publishers' Protective Service," after their earlier series of letters had failed. This latter type of letter is

exemplified by Commission's Exhibit 3. It speaks so clearly as to its own deceptive and misleading character that any extended and detailed analysis and discussion thereof in this decision would be purely superogatory. Said letter reads as follows:

171

"PUBLISHERS' PROTECTIVE SERVICE
Credit Investigations and Collections
of Delinquent Accounts

Department of Investigations

Address Your Reply To
Grand Central Post Office, Box 633
New York 17, New York.

NOTICE:

A duplicate statement of your account is enclosed herewith. We have been instructed to take any necessary steps to effect collection.

Our clients state that some time ago you entered into a definite agreement to make regular monthly payments for merchandise which they furnished you in good faith but that you still owe them the long overdue amount shown.

Our clients further state that you have been given every opportunity to pay this honest debt. They are convinced that you do not intend to pay unless you are sued in court. They are planning on retaining counsel to handle this case for them.

Before we proceed further, we are going to get up-to-date information on you, including your exact present address, your place of employment, amount of salary, and amount of your real and personal property. Do you know that court costs, interest charges, and attorney fees must be paid by the person against whom judgment is rendered? Legal action against you may result in considerable additional expense to you. If you doubt this statement, we suggest that you consult your attorney.

In order that you may avoid unnecessary publicity and expense, we urge you to send your payment today in the enclosed envelope.

"Very truly yours,

'Publishers' Protective Service

/s/ J. M. Leahy
Manager

JML:g

BE SURE TO RETURN THE ENCLOSED BILL WITH YOUR PAYMENT FOR PROMPT IDENTIFICATION AND CREDIT.
IF PAYMENT HAS BEEN MADE DIRECT TO OUR CLIENT WITHIN THE PAST TWO WEEKS, PLEASE DISREGARD THIS NOTICE."

172 It is beyond cavil that any debtor who might receive this type of letter would be led most naturally to believe that his account had been handed over for collection to an entirely independent collection agency as there is nothing on the face of a letter to indicate that any other relationship exists between the "Creditors' Protective Service" and the respondent creditor corporation it therein purports to represent than that of principal and agent, or, perhaps to the more ignorant debtor, also that of client and attorney. The most reasonable inferences arising from the use of such letters are that they were used by respondents for the express purpose of so deceiving and misleading the debtors who received such letters and to constrain them to pay by coercion and intimidation. Respondents have not demonstrated any other purpose in their use of such letters. Notwithstanding their indebtedness, debtors are still members of the public and entitled to be protected from such acts and practices. The mere existence of debts in the United States does not deprive debtors as members of the public of the protection of the Federal Trade Commission Act.

Counsel supporting the complaint contends in substance that the evidence shows that some of the accounts sought to be collected by the said "Publishers' Protective Service" letters were either paid or questioned accounts and requests a finding to that effect. The evidence does disclose that occasionally by reasons of clerical errors a debt which had either been previously paid or had been strongly denied by the debtor

might be included in the list of debtors to whom such "Publishers' Protective Service" letters were sent. But the evidence shows such occasional errors were soon rectified by respondent and such accounts were not pursued further by the use of other "Publishers' Protective Service" collection letters. That such occasional errors occurred is not surprising out of the large nation-wide business of the respondents bringing in some 25,000 remittances per week from all over the country and with current running accounts aggregating about 55,000 in number. Since the evidence does not show that there is any substantial number of such errors occurring, these occasional errors are deemed by the hearing examiner to be entirely inconsequential and are disregarded as matters de minimis. The credible and probative evidence shows that substantially all the debts respondents actually attempt to collect by the use of said "Publishers' Protective Service" type of letters are undisputed debts which are actually owed to respondents.

The evidence is that from about 8 to 10 per cent of the total business of each of the two respondent corporations is finally sent to various collection agencies for collection by them. Of these accounts, approximately one-fourth or some two and one-half per cent of each respondent company's total business was attempted to be collected by them through the said "Publishers' Protective Service" letters, the other accounts
173 being sent to several entirely independent collection agencies located in other large cities of the country. It is quite apparent that many thousands of these "Publishers' Protective Service" letters were and are being sent out in the mails in the course of any given year throughout the United States due to the very substantial size of the business conducted by the respondents and the very small amount involved in each of the collection items, and that it would be economically unfeasible, and in most cases impossible, for a debtor owing say $2.00 or $4.00, to investigate and discover that he was still receiving collection letters from his creditor and not from an independent collection agent. This volume of letters to numerous debtors in interstate commerce throughout the United States fully establishes the public interest in this proceeding

and justifies this Commission's institution and maintenance thereof.

Respondents concede the Federal Trade Commission does have general jurisdiction over the interstate spread of false, misleading and deceptive practices of collection agencies, as well as of other businesses in interstate commerce, but contend that there is no adjudicated case precisely deciding that facts such as are presented and found here amount to violations of the Federal Trade Commission Act. The briefs and arguments presented by counsel for both sides in the course of this proceeding are replete with many of the very numerous decisions of this Commission and of the courts upholding such Commission jurisdiction and right to prohibit unfair and misleading practices by collection agencies. A careful examination of all such cases cited by counsel and many others, however, does not reveal a single one which presents exactly the same limited state of facts as in the proceeding here at bar. The Federal Trade Commission Act, however, was so broadly and flexibly framed by Congress that an exact precedent never need be found to decide whether or not any given state of facts establishes or does not establish violations of the Act. Each case is determinable upon its own facts. The Commission has been given a very wide and sound discretion in all such matters in the public interest. Congress by the Act intended that the American public should not be unfairly treated or deceived by the use of any unfair or deceptive means in interstate commerce and never intended that mere refinements in the Act's interpretation or the generality of the alleged unlawful business practices within any given industry should defeat the basic purposes of the Act.

The cases do establish many pertinent general principles of law, however, and there is one of them which is especially applicable to the situation presented in this case and which completely refutes respondents' contention that the existence of a valid debt justifies a creditor in using the false, deceptive and unfair methods they have used to collect from the debtor.

174 The consistent policy of the Federal Trade Commission from its very beginning has been to interpret and enforce the Federal Trade

Commission Act in all situations involving the use of simulatedly independent collection agencies to mislead and deceive the public, including situations such as that presented here where the creditor or one or more of its officers, own or control the collection agency, which is widely used in interstate commerce to collect debts due the corporation and the debtors are not clearly informed that such collection agency is but an alter ego of the creditor himself. Circumstances vary from case to case, of course, but it has never been held expressly or by inference in any adjudicated decision involving the collection of accounts that it is essential to establish a violation of the Act that counsel supporting the complaint must prove that the debts sought to be collected are not in fact owed, or that they have been originally incurred through any false, misleading or deceptive practice of the creditor. In addition to the numerous Federal Trade Commission cases cited or quoted from in the several respective briefs of counsel, reference is also made to Stipulation 758 (January 28, 1931), 14 F.T.C. 586-587, where respondent corporation agreed inter alia to cease and desist "from making statements or representations so as to import or imply that collection of past due notes and other indebtedness are made through a collecting agency, when in truth and in fact no such agency exists independent of the control of the said corporation or one or more of its said officers and stockholders." This, of course, was not a contested matter resulting in an adjudication against a resisting respondent. It does indicate, however, that such practices were looked upon as illegal by the Commission as far back as a quarter of a century ago.

But more recently the Commission in a contested proceeding has expressly and clearly held in DeJay Stores, Inc. (1952), 48 F.T.C. 1177, 1190: "Although the collection of honest and legitimate debt is a legal and even worthy aim, it does not justify or make legal the use of means which are false, misleading or deceptive." And this case was affirmed in DeJay Stores, Inc. v. F.T.C. (C.A. 2, 1952), 200 F.2d 865, 867, where the court in upholding broadly the Commission's order as being in the public interest, specifically held: "The Federal Trade

Commission's conclusion that it is in the public interest to require that creditors should not use dishonest methods in collecting their debts is within its discretion." This decision is the latest law on the subject.

It is the undisputed evidence that this collection agency is owned solely by respondent Crawley and is now used, and for some years past
175 has been used, to collect admittedly valid debts of respondent corporations which he controls. The Federal Trade Commission therefore has authority to prevent this "fictitious" agency from carrying on its business. It is unnecessary to comment much on the term "fictitious." Possibly "bona fide" would have been a more accurate legal expression in this complaint, but administrative pleading is not to be construed with technical nicety. The facts bring the methods of respondents' collection practices through "Publishers' Protective Service" under the above-quoted legal principles.

While originally "Publishers' Protective Services" also functioned as a general collection agency for other publishers, it has for some years past served and now serves only as an agency to collect the corporate respondents' various accounts. "It is not independent of and distinct from respondents and is not a bona fide collection agency." Teitelbaum, et al. d/b/a United States Stationery Co., 49 FTC 745, 752. See also United States Pencil Co., Inc., et al., 49 FTC 734, 743, a companion case. In each of these two cases the collection agency was registered as a trade name in the New York County Clerk's Office, just as Crawley has registered "Publishers' Protective Service" here.

But respondents claim that registration under the New York Penal Law, Section 440, makes the use of the name "Publishers' Protective Service" legal and proper. Whether or not Crawley was registered by the name "Publishers Protective Service" under New York Penal Law, Section 440, as a collection agency is immaterial to the deception actually practiced or the type of undue pressure, harassment and coercion the alleged collection agency's type of letters such as Commission's Exhibit 3 bring to bear on multitudinous debtors throughout the United States. It definitely appears that these addressed debtors are not advised by the letters that

Crawley controls both the particular creditor corporation and the alleged collection agency but the language used by the respondents in the collection agency letters both says and implies quite to the contrary. Respondents have cited no cases under the Federal Trade Commission Act in any way holding that the mere device of a certificate required by a state penal act for the use of a trade name such as is employed here avoids a violation of the Act by the user and holder thereof. All the Federal Trade Commission cases clearly prohibit any kind of collection scheme which is false, misleading or deceptive, even if the sole object is to collect lawful debts. The numerous recent "skip-tracer" cases, such as DeJay Stores, Inc. v. FTC, supra, and cases cited therein, are illustrative of this principle. Whether all, or substantially all, of the debts, are valid is therefore of no great materiality.

176 The said trade name registration statute relied upon by respondent, Section 440 of the New York Penal Laws (as amended by Laws 1948, ch. 749, Sec. 1, effective September 1, 1948), insofar as relevant here, makes the transaction of business by an individual under a trade name not registered with the proper local authority a misdemeanor. This statute has been held to be "a highly penal one" which "deserves a strict construction" and in its origin "was a measure intended to be in the interest of the commercial community, and had its foundation in public policy. It simply made it a misdemeanor to do what was therein specified, and that is all." Sinott v. German American Bank (1900), 164 N.Y. 386, 391, 58 N. E. 286, 287. It was designed to protect merchants selling merchandise for use in the particular business. Cone v. Ballou (1931), 251 N.Y.S. 791, 795. In the foregoing and many other New York decisions compliance or non-compliance with this statute has been held not to be a defense in a wide variety of court actions. For example, compliance or non-compliance therewith is not a defense in civil suits wherein the trade name whether registered or not under said Section 440, infringes on that of another. See Niagara Mohawk Power Corp. v. Simon (1953), 125 N.Y. S. 2d 813, 814-815; and Socony-Vacuum Oil Co. v. LaFariere (1944), 48 N.Y.S. 2d 421, 422. See also U.S. Light,

etc. Co. of Maine v. U.S. Light etc. of N.Y. (Cir. Ct., S.D. N.Y. 1910), 181 F. 182, 184-185 (dictum). In short, said statute is a penal act and nothing else. It gives no right to respondents here to use an artificial name to mislead and deceive others in commerce as to the true identity of the one sending out the "Publishers' Protective Service" collection letters or to intimidate the debtors to whom the letters are mailed. Certainly respondents have not demonstrated why compliance with this penal State statute of New York by respondent Crawley in order for him to avoid the penalties which would be warranted against him under New York law if he committed a misdemeanor, constitutes a legal defense under the Federal Trade Commission Act in the case at bar.

But respondents claim that what they have done in sending out collection letters under the name "Publishers' Protective Service" is a practice which is essentially universal within the bookselling industry. But in no event is this a defense to a misleading and deceptive practice which violates the Federal Trade Commission Act. See International Art Co. v. F.T.C. (C.C.A. 7, 1940), 109 F.2d 393, 397. In passing, it may be appropriate to say that while this Commission certainly does not favor the refusal of debtors to pay their just debts, it cannot permit respondents to use unfair and misleading practices in interstate commerce to collect them. Of course it is plain that if respondents were more careful in their
177 extension of credit in the first place, they might have substantially fewer difficult debts to collect. But the Commission has no authority or desire to regulate any of the respondents' business methods unless the same violate the Federal Trade Commission Act and the respondents are entitled to extend credit as they choose.

The hearing examiner has hereinbefore found that the debts sought to be collected by letters such as Exhibit 3 are valid. But the important thing is that the debtor is deceived by said letters in the use of an entirely different name from that under which he knows his creditor. No good reason appears as to why any legitimate creditor should resort to concealing his real identity by using collection letters of the type used in

this case. It is true, as respondent argues, that the Federal Trade Commission is not a moral supervisor of business ethics and methods. But it does have the positive duty enjoined on it by law to prevent further deception and other unfair practices in interstate commerce by stopping in their incipiency such unlawful practices which definitely tend to deceive and coerce the public.

Respondent contends in substance that it has abandoned the use of letters such as Commission's Exhibit 3, and is now sending out other letters under the name of "Publishers' Protective Service." While the witness Crawley identified such a letter, it was not offered or received in evidence and the hearing examiner cannot conjecture as to whether it was less unfair and deceiving or more unfair and deceiving than those of the type of Commission's Exhibit 3 definitely were. Respondent also raises a number of other objections relating to the failure of the Commission to show that anyone has been damaged and the like but these have been refuted by citations in the brief of counsel supporting the complaint which are so basic in Federal Trade Commission law that discussion thereof in this initial decision is deemed unnecessary.

Upon the entire record herein, the hearing examiner therefore finds that this proceeding is to the interest of the public and that the Commission has jurisdiction over the subject matter hereof, as well as of the person of each of the respondents. The hearing examiner under the admissions of the pleadings and the facts established by the evidence, upon the whole record also makes the following specific findings of fact:

178 1. The respondent named in the complaint as Wm. H. Wise Co., Inc., also sometimes variously referred to in the record and briefs herein as Wm. H. Wise & Co., Incorporated, Wm. Wise Co., Inc., Wm. H. Wise Company, Inc., William H. Wise Co., Inc., and William H. Wise Company, is a corporation duly organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 50 West 47th Street, in the City and State of New York. The respondent The Charming Woman, Inc., is a corporation duly organized, existing and doing business under the laws of the State of New

York, and is a wholly owned subsidiary of said respondent Wm. H. Wise Co., Inc., with its principal office and place of business at 37 West 47th Street, in the City and State of New York. The respondent John J. Crawley is an individual and president of said corporations and for many years he formulated, controlled and managed all of the policies of said corporations and continues to do so. His principal office and place of business is t e same as that of the respondent Wm. H. Wise Co., Inc.

2. For more than two years last past respondent, The Charming Woman, Inc., has been engaged in the sale and distribution of a course of instruction in beauty care which said course was sold and pursued by correspondence through the United States mails. Said respondent, in the conduct of said business, caused said course to be transported from its said place of business in the State of New York to purchasers thereof located in states other than the State of New York. There is now and has been at all times material hereto a substantial course of trade in said course of instruction so sold and distributed by said respondent in commerce.

3. In the course and conduct of said business as aforesaid, respondents have adopted and used the name "Publishers' Protective Service" to collect and enforce past due accounts. "Publishers' Protective Service" is and at all times material hereto has been owned and operated solely by respondent Crawley, and all of the employees are employees of corporate respondent Wm. H. Wise Company, Inc. In 1935 respondent Crawley was Vice President of corporate respondent Wm. H. Wise Co., Inc., when he first adopted the trade name "Publishers' Protective Service."

4. On December 28, 1935, respondent John J. Crawley signed a certificate declaring his intention to conduct a collection business in New York City under the said name of "Publishers' Protective Service"; that Certificate No. 50799 was issued by the County Clerk, New York County, State of New York, certifying that the original certificate of conducting
179 business was filed in his office December 31, 1935, under file No. 13962-1935.

5. For some years after December 28, 1935, "Publishers' Protective Service" made collections for other publishers as well as for respondent corporations, although such accounts were substantially handled as the respondents' own accounts. In recent years "Publishers' Protective Service" has been used exclusively for the collection of accounts of respondent corporations.

6. "Publishers' Protective Service" has been used and is currently being used by respondents only after a series of nine to twelve letters have been sent to such debtors by respondent corporations; that subject only to the possibility of occasional clerical error, "Publishers' Protective Service" has never been used to attempt to collect delinquent accounts where debtors have paid or have previously denied owing such accounts, and has been intentionally used by respondents only to collect bona fide delinquent accounts.

7. That no accounts of customers of respondent corporations were ever sold or transferred to "Publishers' Protective Service" and no debtor of respondent corporations has been deprived of any legal defense by reason of the handling of respondents' accounts against them by reason of respondents' use of the said "Publishers' Protective Service" collection letters.

8. The representations of respondents in interstate commerce that "Publishers' Protective Service" is a separate and independent collection agency and an entirely different organization than the respondent corporations have tended to mislead and deceive the public. "Publishers' Protective Service" is not a "bona fide" collection agency but is a "fictitious" one as that term has been defined and construed by the Federal Trade Commission and is not a "bona fide" separate and independent organization or business from respondents or any of them.

9. Respondents have used and are using the fictitious name of "Publishers' Protective Service" to coerce and intimidate the customers of respondents by means of collection letters sent out under the name and post office address of "Publishers' Protective Service," which letters also have tended to deceive and mislead the recipients of said letters

into believing that the "Publishers' Protective Service" is an organization and business entirely separate from and independent of respondents'
180 corporation; that said letters were and are being sent by respondents to legitimate debtors of respondents who have purchased but have not paid for correspondence courses of instruction in beauty care published by respondent The Charming Woman, Inc.

Upon the facts herein found, it is concluded that:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and jurisdiction of the person of each of the respondents; and this proceeding is to the public interest; and
2. The said acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Upon the foregoing findings and conclusion the following order is made against each and all of the respondents herein:

ORDER

IT IS ORDERED that respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and their officers; and John J. Crawley, individually and as an officer of said corporation; and the respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, in commerce as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction in beauty culture, or any courses of study or instruction, or any other product, do forthwith cease and desist from:

1. Using fictitiously any trade or corporate name in collecting past-due accounts;
181 2. Implying that such fictitious collection agency is an independent organization engaged in the business of collecting past-due accounts.

/s/ Loren H. Laughlin
Hearing Examiner.

May 29, 1956.

255 Commissioners: John W. Gwynne, Chairman
Lowell B. Mason
Robert T. Secrest
Sigurd Anderson
William C. Kern

FINAL ORDER

Respondents having timely filed on August 15, 1956, their appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on briefs and oral argument; and

The Commission having rendered its decision denying respondents' appeal and adopting the initial decision as the decision of the Commission.

IT IS ORDERED that respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision.

By the Commission, Commissioner Mason not participating.

/s/ Robert M. Parrish
Secretary

ISSUED: November 1, 1956

256 OPINION OF THE COMMISSION

By Gwynne, Chairman:

The questions raised by this appeal of respondents have to do with Paragraph Seven of the complaint which states as follows:

> "In the course and conduct of said business as aforesaid, respondents have adopted and use a fictitious trade name, to wit, Publishers Protective Service, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Publishers Protective Service is an independent and separate organization employed to collect accounts which are in arrears.

"In truth and in fact said fictitious collection agency is operated solely by respondent John J. Crawley and is used by respondents to coerce and intimidate purchasers of said course of instruction, as well as persons who have cancelled orders therefor, and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged."

Respondent, The Charming Woman, Inc., 50 W. 47th Street, New York City, is a corporation engaged in the sale and distribution of a correspondence course of instruction in beauty care. Respondent William H. Wise Co., Inc., 50 W. 47th Street, New York City, is also a corporation engaged in the sale and distribution of a number of products through the mail. John J. Crawley is president of both corporations.

257 About December 28, 1935, John J. Crawley filed with the County Clerk and Clerk of the Supreme Court of New York County a sworn statement of intention to conduct a collection agency at 50 W. 47th Street, New York City, under the name of Publishers Protective Service, and stating that the person conducting said business was John J. Crawley.

The questions presented in this appeal are:

(1) Is Publishers Protective Service (PPS) a bona fide independent collection agency as that term is generally understood, or only a fictitious or make-believe organization operating under the control of and for the benefit of other organizations with which Mr. Crawley is associated?

(2) Is the element of deception as required by the Federal Trade Commission Act present?

(3) Has the element of public interest been established?

The evidence, which consists of the testimony of John J. Crawley and certain Commission exhibits, establishes the following:

The mail address of PPS is Box 633, Grand Central Station, New York City, which box is registered in the name of John J. Crawley; Mr. Crawley did not know if it had a listed telephone number or how it could be reached by telephone; It was listed on the office bulletin board where other respondent corporations are listed and had a headquarters where

customers could contact it; Mostly William H. Wise Company employees handled the details of PPS operations, -- that is, the necessary record keeping, multigraphing, checking and answering correspondence; Mr. Crawley did not think anyone worked for PPS who was not an employee of William H. Wise Company; PPS kept separate bookkeeping records; It does not handle accounts for others than William H. Wise and affiliated companies; Originally it did handle accounts of some other publishers, when their accounts involved customers of William H. Wise Company; That practice was given up six or eight years ago; Respondent corporations at times utilized the services of other collection agencies; About 8% to 10% of the total business of each of said corporation is eventually thus sent for collection; Of this total, about 25% is handled by PPS; If the efforts of PPS brought from the alleged debtors claims that debts were not owed, this question was referred to the creditors for personal attention; When customers of respondent corporations were in default, attempts to collect were made by sending out a succession of nine to twelve letters "of varying degrees of friendliness"; Included were notices

258 on the letterhead of William H. Wise Company (Commission's Exhibits 4 and 5) advising that if payment were not made, the account would be placed with a "collection agency" or "an outside department for collection"; This was referred to as "about as unpleasant a thing as we can think of;" After this, the letter Commission's Exhibit 3 was sent, the material parts of which are as follows:

"PUBLISHERS PROTECTIVE SERVICE
Credit Investigations and Collections of
Delinquent Accounts
Department of Investigations

NOTICE:

A duplicate statement of your account is enclosed herewith. We have been instructed to take any necessary steps to effect collection.

Our clients state that some time ago you entered into a definite agreement to make regular monthly payments for merchandise which

"they furnished you in good faith But that you still owe them the long overdue amount shown.

Our clients further state that you have been given every opportunity to pay this honest debt. They are convinced that you do not intend to pay unless you are sued in court. They are planning on retaining counsel to handle this case for them.

Before we proceed further, we are going to get up-to-date information on you, including your exact present address, your place of employment, amount of salary, and amount of your real and personal property. Do you know that court costs, interest charges, and attorney fees must be paid by the person against whom judgment is rendered? Legal action against you may result in considerable additional expense to you. If you doubt this statement, we suggest that you consult your attorney.

In order that you may avoid unnecessary publicity and expense, we urge you to send your payment today in the enclosed envelope.

Very truly yours,
Publishers Protective Service
/s/ J. M. Lahy
Manager"

259 The hearing examiner found that "Publishers Protective Service is not a 'bona fide' collection agency but is a 'fictitious' one as that term has been defined and construed by the Federal Trade Commission and is not a 'bona fide' separate and independent organization or business from respondents or any of them."

We agree with this finding. PPS did not handle accounts for creditors outside the William H. Wise corporations. This would, of course, not be controlling, if it in fact did have an independent existence, which obviously it did not. Its employees were employees of William H. Wise and Company. In regard to the accounts of respondent corporations, it does not appear that it performed the ordinary function of a collection agency except to send out Commission's Exhibit 3 and to funnel reports to the creditors for their disposition. It does not exist for its own

independent purposes but only for the purposes of respondent corporations.

International Art Company, American Discount Company, and John C. Kuck v. FTC (1940) 109 F. 2 (d) 363 presented a somewhat similar situation. There, the first two respondents were separate corporations having the same office and place of business and were organized by Kuck who was president, general manager, and owner of substantially all the stock of each. The product in question was sold by the art company and sometimes payment was made by notes payable to the discount company, which then assumed the role of an innocent purchaser for value. The court said:

> "The finding is to the effect that both corporations have their office in the same room with merely an aisle separating the desks. International Art Company used 325 W. Huron Street as its address, and the discount company The Orleans-Huron Building as its address. Kuck was president of both and owned practically all the stock in each. The flimsy argument is made that the discount company was organized for the benefit of the customers whose notes were discounted. It is plainly obvious, however, that it was for the benefit of Kuck and the art company. Petitioners came close to correctly appraising the situation in their answer in stating that the discount company served 'in an effort to discourage customers from setting up trumped-up charges against a legitimate balance small in amount and far from the home office.' * * * There can be no doubt but that it was a corporation without substance and that its purpose was to aid and assist in the art company's plan of operations."

260 The fact of registration under the New York statute is not conclusive on the factual question at this point. Statutes requiring the registration of trade names have been adopted in many states and have been construed by the courts. Their general purpose is to afford an opportunity for the public to know the identity of the individuals operating under the particular trade name. The New York statute provides a penalty for not stating the true facts in this regard. Nowhere does it indicate any intention to

create a presumption that the facts recited therein are conclusive on the question involved here. In any event, the sworn statement in 1935 that Mr. Crawley intended to operate a collection agency does not offset the evidence showing what the actual situation was at a later date. See in the Matter of U. S. Pencil Company, 49 FTC 754.

As to the second question raised in the appeal, the hearing examiner found:

> "The representations of respondents in interstate commerce that Publishers Protective Service is a separate and independent collection agency and an entirely different organization than the respondent corporations have tended to mislead and deceive the public."

We are also in accord with this finding. It is, of course, not necessary to prove actual deception or injury to any particular individual. It is enough if the practice is of such a character as under the circumstances would have a natural tendency to deceive. In considering the effect on the alleged debtor, it is necessary to consider the entire sequence of events including, first, the nine to twelve letters from the creditor corporations, second, the notices that the matter was being referred to a collection agency or outside department for collection (which was referred to as an unpleasant experience) and, finally, the letter from PPS purporting on its face to be from an organization engaged in credit investigations and collections for the protection of those engaged in the distribution of books. This letter was well designed to impress the addressee with the unpleasantness of the steps which were proposed to be taken in the matter of investigation and possible suit. The vigorous methods generally adopted by collection agencies are well known and the attitudes of debtors toward payment of even a just account have often been considerably changed thereby. The corporate respondents sought to attain these results, not by the hard way of actually employing a bona fide collection agency, but by pretending that they had done so.

261 In the Matter of National Remedy Company, et al., 8 FTC 437, respondent was ordered to cease and desist from falsely representing

that it had placed its claims in the hands of a collection agency. In the Matter of May Goldberg, et al., 40 FTC 296, respondents sent letters from a purported collection agency, which letters were simply purchased in blank. Thus, the addressees were induced to believe that the letters were sent by a bona fide collection agency when, in fact, the senders were the respondents. The Commission prohibited this practice.

It is true in some of these cases there were other elements of deception, such as falsely claiming to be an innocent purchaser for value. Nevertheless, the Commission has entered orders against misrepresenting a fictitious collection agency as a bona fide one without anything more. For example, in the Matter of New Standard Publishing Company, 47 FTC 1350, order vacated on other grounds, 194 Fed. 2nd 181 (4th Cir. 1952), respondent was ordered to cease and desist from representing:

> "(14) That Commercial Finance or any other trade or fictitious name under which business is done by respondents is a bona fide collection agency not connected with the respondent New Standard Publishing Company.
>
> "(15) That any purchaser's contract has been assigned to or discounted with a bona fide collection agency where such is not the fact."

The hearing examiner found that:

> "No debtor of respondent corporations has been deprived of any legal defense by reason of the handling of respondents' accounts against them by reason of respondents' use of the said Publishers Protective Service collection letters."

He also found that PPS has been intentionally used by respondents only to collect bona fide delinquent accounts.

These facts, however, do not justify the adoption of that part of respondents' Fifth Proposed Finding which states that collection of accounts by PPS has not resulted in detriment to the purchasing public within the purview of Section 5 of the Federal Trade Commission Act; nor did it necessitate adoption of respondents' Seventh Proposed Finding that PPS has not been used to coerce purchasers to make payment.

262 The basis of the complaint against respondents is that they falsely represented PPS as being a bona fide independent collection agency, when, in fact, it was not, and that such misrepresentation has the tendency and capacity to deceive. Nothing more need be proved. Ohio Leather Company v. FTC (1930) 45 F. 2(d) 39, cited by respondents is not inconsistent with the holding here. In that case, the claimed deception was based on the use of the trade name "Kaffor-Kid", in that it induced the belief among consumers that the leather was from a young goat or kid. The court held that the evidence did not show that to be the fact.

This leads to the final argument of respondents that public interest is lacking.

It appears that respondents had many accounts in various parts of the country. Some of them involved only a few dollars. This brings to mind the situation suggested in FTC v. Klesner (1929) 280 U.S. 19, where the Supreme Court said public interest may exist " * * * because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected was too small to warrant it." In De Jay Stores, Inc. v. FTC (1952), 200 F. 2(d) 865, the court said: "But it is not necessary to establish that the person deceived has suffered any pecuniary loss."

It is true that all persons should pay their just debts. Within legal limits, creditors are entitled to pursue their collection methods energetically. That does not, however, justify methods that are deceptive under the law. This has been consistently held both by the Commission and the courts.

Respondents also complain of the reception in evidence over their objection of Commission's Exhibits 4 and 5. These were the notices already referred to on the letterheads of William H. Wise Company, Inc., stating that if the debt were not paid, the matter would be referred to an outside department or a collection agency. Because it appears that William H. Wise Company did employ other collection agencies whose independent status is not disputed, respondents claim that the above reference is to

them rather than to PPS. Mr. Crawley described the procedure of sending out nine to twelve notices before turning over the matter for collection. He did not testify that any different practice was followed with PPS than with other organizations. Nor does it appear that any distinction was made between the two corporate respondents in this re-
263 gard. The argument of respondents' counsel goes to the value of the evidence rather than to its admissibility.

The appeal of respondents is denied. The findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission.

It is directed that order issue accordingly.

Commissioner Mason did not participate in the decision of this matter.

November 1, 1956.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

270 * * * * * *

JOHN J. CRAWLEY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Tincher:

Q. Will you state for the record your name and address.

A. John J. Crawley, 23 Shawnee Road, Scarsdale, New York.

Q. What is your business address, Mr. Crawley? A. 50 West 47th Street, New York City.

Q. You are the same John J. Crawley that is named as the individual respondent in Docket No. 6288-A? A. I am.

Q. You are the president of the Charming Woman, Inc., are you not, sir? A. I am.

Q. In the collection of income for that corporation, you have used the name Publishers' Protective Service? A. I think so. I don't know specifically, but it is a common practice with all our products.

Q. You have used that name in the collection of income, sir?

A. Sorry?

271 Q. You have used that name, Publishers' Protective Service, in connection with your various corporations? A. As well as Charming Woman, rather, products of Wise & Company. In other words, we have about 168 different products and Publishers' Protective Service is used for all those products.

Q. When you say "we", to whom are you referring? A. William H. Wise Co., Inc., only.

Q. What is Publishers' Protective Service? A. It is primarily a collection agency for the purpose of following up customers who have ignored eight to ten collection letters that have been previously sent to them.

Q. Is it a corporation or trade name? A. Trade name operated by me.

Q. When did you first use this name, Mr. Crawley? A. Well, officially I suppose that it dates from the time that the company was re-incorporated, January 1st, 1936.

Q. By "company" you are referring to William H. Wise Company? A. William H. Wise Company.

* * * * * *

272 By Mr. Tincher:

Q. (Handing paper to witness) Can you identify the document, sir? A. It is a document I signed back in 1935. It is a permission to do business under a personal name in the State of New York.

* * * * * *

273 Q. Mr. Crawley, when you say, this is a license to do business, that you signed, do you mean this is a photostatic copy? A. Photostatic copy of such license.

Q. That you signed in 1935? A. That's right. May I correct the previous statement as to how long I have been using it and correct that?

Q. Yes. A. It is December 31st, 1935.

MR. TINCHER: I offer it.

MR. SCOTT: We have no objection.

HEARING EXAMINER LAUGHLIN: It may be received.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 1, was received in evidence.)

By Mr. Tincher:

Q. Mr. Crawley, is the name Publishers' Protective Service sometimes used by you? A. Yes, sir.

Q. What is the address of Publishers' Protective Service? A. I believe it is a Post Office Box at Grand Central Station.

Q. Is that Box 633, Grand Central Station? A. I believe so.

Q. In whose name is that box registered?

274 A. My name.

Q. How long has the particular Box 633 been registered? A. I don't know, but a number of years.

Q. What is the telephone number of Publishers' Protective Service? A. I don't know if we have one or not.

Q. May I suggest to you Publishers' Protective Service is not listed and has no telephone, would that be correct? A. I don't know.

Q. Who works in Publishers' Protective Service? A. Mostly William H. Wise employees handle the details because we have the kind of mechanical operation to support the activity. In other words, the necessary record-keeping and multigraphing and checking and answering and corresponding.

Q. Does anyone work for Publishers' Protective Service who is not an employee of William H. Wise & Company? A. I don't think so.

Q. If Publishers' Protective Service should send a letter to a customer of William H. Wise & Company residing in the Metropolitan New York area, and that person desired to get in contact with Publishers Protective Service, could he call them on the telephone? A. I don't know.

Q. Would anyone in your corporation know? A. Telephone
275 operator might.

Q. What accounts does Publishers' Protective Service have at the present time ? Perhaps I can aid you. Does it have any accounts other than corporations of William H. Wise and Co. ? A. Not now, but some time ago we did have a number of other accounts but they were too difficult to handle as to whose money belonged to whom -- dead-beats of Wise & Company was on the dead list of -- whose name was on Wise's list, what on Walter J. Black, Inc., and Doubleday, Inc. out in Garden City. There were a few others, but we didn't -- it wasn't a good idea because of the great volume of accounts which were ours and the accounts we had with them was usually the same people.

Q. When was this that you last had them? A About six, maybe seven, eight years.

Q. Am I correct in understanding that when you had accounts with Doubleday and other corporations, other than your own corporations, that the persons with whom you were in contact were also debtors of William

Wise & Co.? A. Customers.

Q. As a matter of fact, that was your method of original contact with them, was it not? A. I am not sure that I understand that question.

Q. Persons who were debtors of Doubleday or other concerns

276 from whom Publishers' Protective Service endeavor to collect, was not the original contact with those people, because they were also debtors of William H. Wise & Company? A. No. It was not so.

* * * * * *

277 By Mr. Tincher:

Q. Mr. Crawley, I hand you Commission's Exhibits 2 and 3 marked for Identification, and ask you to identify them (handing two papers to witness). A. Return envelope addressed to the Publishers' Protective Service, Box 633, Grand Central Post Office, New York 17, N.Y.

Q. Commission's Exhibit No. 3? A. Publishers' Protective Service letter signed J. M. Leahy, corner MJL:g.

Q. I refer you to the signature appearing. A. J. M. Leahy, L-e-a-h-y.

Q. Is Mr. Leahy a former or present employee? A. No longer with us.

Q. Are these Commission exhibits, Nos. 2 and 3 for Identification, used in the normal course of business by Publishers' Protective Service?

* * * * * *

278 By Mr. Tincher:

Q. Could you tell us, sir, when was the last date when Commission's Exhibits 2 and 3 were used. No. 3 is the form letter. A. Some time last year, I think, might have been the year before, within a year from

279 the present time.

Q. Commission's Exhibit No. 3 was used, was it not, to collect money from persons who had subscribed to courses for Charming Woman, Inc.? A. As well as a hundred other products, yes.

Q. Commission's Exhibit No. 3 was sent to persons all over

the country, was it not? A. That is right.

Q. When I say, country, I mean other than the State of New York? A. That's right.

Q. I believe you testified earlier, sir, that the Publishers' Protective Service was utilized only after various attempts to collect money from the debtor had been made? A. An average of nine letters of varying degree of friendly approach had been used.

* * * * * *

280 By Mr. Tincher:

Q. I hand you sir, what has been marked Commission's Exhibits 4 and 5 for Identification and ask you to identify those for us (handing papers to witness).

* * * * * *

A. They appear to be collection notices sent out with the regular monthly statements of Wise & Company. It has nothing to do with Publishers' Protective Service in any way.

* * * * * *

281 MR. SCOTT: May I at this time, your Honor, ask counsel for the complaint to state for the record what he intends offering these exhibits for, because he makes an indication by way of an explanation on Paragraph 7, which unless I did not understand him, I fail to see gives any reason.

MR. TINCHER: We will be happy to do so.

HEARING EXAMINER LAUGHLIN: It will be helpful if counsel will do so.

MR. TINCHER: I might say, the witness has advanced, the reason, he volunteered the information that prior to the utilization of Publishers' Protective Service, William H. Wise & Company sent many

28 letters to their debtors demanding payment, and I think that we have a right to determine from those letters what they were told would happen to them if they did not pay. I think those letters will note it, and I think in view of the charge of Paragraph 7, and that it has been represented and implied that said Publishers' Protective Service is an individual and

separate organization employed to collect accounts which are in arrears, we are perfectly justified in using other documents of William H. Wise & Company to prove this one express point which is contained solely in Paragraph 7.

* * * * * *

285 BY MR. TRENCHER:

Q. Do I understand you, Mr. Crawley, that no one has ever received a letter from Publishers' Protective Service if he has denied to the corporation involved, William H. Wise, has denied he owes any money? A. Other than the possibility -- if that is what you mean I wish you would say so -- that out of 25,000 remittances per week there might be on occasion a clerical error.

Q. Have you had many clerical errors called to your attention? A. He gets a monthly report on them.

Q. Have you had them called to your attention by the Better Business Bureau? A. Every last one of them is investigated. We sent men out to Cleveland:

Q. That is not responsive. Repeat the question.

HEARING EXAMINER LAUGHLIN: Counsel may rephrase it as near as possible in the language heretofore used.

BY MR. TINCHER:

Q. Had the Better Business Bureau ever called to your attention
286 the fact that customers of yours had received collection notices from the Publishers' Protective Service after they denied to the corporation involved, William H. Wise, that they owed that corporation any money? A. I have no record of ever having received any such record from a Better Business Bureau; and the policy of the company is to follow every one of these up to the "enth" degree, even to the extent of engaging a local attorney in the event, in many cases, the customer has been lying.

Q. Has Publishers' Protective Service ever sent a copy of Commission's Exhibit 3, the form letter, to a customer who has previously cancelled his membership or his order? A. Never as a company policy, but within the limitations of what I stated before, if that

is what you are asking me, does the company work perfectly 100 percent of the time on the volume of this business we do, I don't know. The rule is, the minute we hear from a customer it is changed from these form letters to correspondence. There will be things that cross in the mail. You are dealing with a customer out on the west coast, his letter comes in, it may be six or seven days while you have sent him a letter, and on the second day, he sent it, and it crossed, and the sixth day after he gets mad. We can't help that, though we have corrected it since.

Q. I am restricting myself to Publishers' Protective Service, not your operation as a whole. A. I am talking about Publishers' Protective Service only, not talking about the operations of the company as a whole.

Q. It is your testimony, as I understand it, that the only time a copy of Commission's Exhibit 3 is ever sent out to a customer who denies the debt or who states he has cancelled his membership is through clerical error? A. That is correct.

Q. Can you tell us the reason for this, sir? A. Just common sense.

Q. When a copy of Commission's Exhibit No. 3 is successful and the former debtor sends in money as a result of that letter, to whom is the payment made? A. Usually William H. Wise & Company, if that is your question.

Q. Yes, sir, it is. It is correct, is it not, sir, that Publishers' Protective Service has, through use of Commission's Exhibit No. 3, been able to collect debts for you after the various other attempts we have talked about have failed? A. I am not sure I understand what other various efforts you mean.

Q. By other various efforts I refer to the nine or twelve notices of one nature or another. A. That is correct.

288 Q. Is it not true, sir, that you own and operate and control Publishers' Protective Service? A. I own it.

* * * * * *

289 BY MR. TINCHER:

Q Mr. Crawley, these collection attempts we have been speaking of, by Publishers' Protective Service, were on behalf of Charming Woman, Inc., as a result of their plan of business as set out in the complaint here, were they not? In other words, it was a result of Charming Woman, Inc. selling? A. I have lost the trend of it.

290 MR. SCOTT: Would you rephrase it?

HEARING EXAMINER LAUGHLIN: Yes. I think it is too complicated.

BY MR. TINCHER:

Q. The collection attempts by Publishers' Protective Service that we have been talking about, these were attempts which were necessitated as a result of people not paying for beauty courses which they had ordered from the Charming Woman, Inc.? A. Among others.

* * * * * *

CROSS EXAMINATION

* * * * * *

292 BY MR. SCOTT:

Q. Mr. Crawley, at the time you formed the Publishers' Protective Service listed here as December 28th, 1935, I ask you whether or not you had any ownership in William H. Wise Company? A. Very nominal, I would say I think I had six or seven shares out of 73,000. That would be --

Q. Mr. Crawley -- A. -- less than one-tenth of 1 per cent.

* * * * * *

293 BY MR. SCOTT:

Q. My question is, was the Publishers' Protective Service as organized in the 28th day of December, 1935, organized primarily and solely for the William H. Wise accounts? A. Well, it was for the purpose of collecting all accounts which we might have to carry forward to the 8th or 10th, it was a regular collection agency.

Q. Now, Mr. Crawley, I believe you stated on direct examination that the Publishers' Protective Service had collected accounts for Doubleday, the Black concern, and have you ever collected any accounts for the Book-of-the-Month Club? A. Yes. I think we had Book-of-the-Month in it at that time, too. There was another one, Greystone Press, I think.

Q. Did there come a time when you decided to confine Publishers'
294 Protective Service activities to the William H. Wise and subsidiary Companies? A. That's right.

Q. Why was that? A. The volume of business was getting too big and we -- when I filed certificate of doing business in December, 1935, we had about three or four hundred thousand dollars worth of business per annum. Later that grew to ten million dollars and volume of business in our case -- let me go off the record a minute. Book-of-the-Month and rest of those fellows had Book Club and they have the same customers from one end of the year to another, whereas in that same period of time we had twelve customers and we have 25 or 35 or sometimes 55,000 accounts a month, and they would have 5,000, and the proportion of delinquents would be tiny; we thought we would save money by spreading the overhead on Publishers' Protective Service.

* * * * * *

295 BY MR. SCOTT:

Q Publishers' Protective Service, Mr. Crawley, the accounts that were given to them, were bona fide delinquent accounts, were they not?

* * * * * *

A. That is correct.

BY MR. SCOTT:

Q. Were there any accounts that Publishers' Protective Service had that were never sold to Publishers' Protective? A. Never.

296 Q. As a result of any accounts being placed in the hands of Publishers' Protective Service, was the debtor placed in any different position than he had been prior to that time?

* * * * * *

THE WITNESS: None at all.

* * * * * *

297 BY MR. SCOTT:

Q. With regard, Mr. Crawley, to Charming Woman, when did the Publishers' Protective Service start handling accounts for the Charming Woman, Inc.? A. I would say somewhere around the middle, early summer, maybe of late Spring or Spring of 1951.

* * * * * *

298 Q. At some later date, Mr. Crawley, did the Publishers' Protective Service at the suggestion of counsel, change the type of letter that they were sending to these delinquent accounts? A. They did.

Q. I ask you whether or not you can identify that, Mr. Crawley (handing paper to witness). A. That is the letter we are using now.

Q. You can identify it? A. I can identify it.

MR. SCOTT: Mr. Reporter, please mark as Respondents' Exhibit 1 for Identification.

(The paper referred to was marked Respondents' Exhibit 1 for Identification.)

299 BY MR. SCOTT:

Q I believe you stated, further, on cross-examination Mr. Crawley, did you not, that the accounts which were given to Publishers' Protective Service were given as the last resort, after numerous attempts had been made to collect the accounts? A. That is right.

* * * * * *

BY MR. TINCHER:

Q. Mr. Crawley, you stated just to Mr. Scott, after numerous attempts to collect had failed, the Publishers' Protective Service was called upon. Would you explain to us how these statements were sent, exactly what happened? A. We would send out monthly statements and get no payment.

Q. Did you receive any reply at all? A. Well, in many cases we would get replies saying, "My husband lost his job," or that "we were

laid off", or "I can't afford it, will you carry me for another month" --
300 the usual type of request for extension, which we usually granted.

Q. Did you get replies from people stating they did not owe any debt? A. In many cases, I think we did.

Q. Did you get replies from people stating they had cancelled their membership? A. Are we talking now about Charming Woman?

Q. Yes. A. Any time we got any kind of such notice from Charming Woman customers, we cancelled them instantly in every single case.

Q. In regards to future orders, but confining ourselves to the past, from the date of the letter backwards. A. I am not sure I understand.

Q. Did you cancel out what you considered they owed you, or were they left on your list to be sent further letters? A. The method of selling Charming Woman required the delivery on our part of a new series of lectures on the subject of charm and beauty every ten days, and we would, if the customer cancelled, adjust the last ten-day shipment, if that was the question involved, but generally speaking, we bill them for everything they had received up to that point; we would continue to bill them.

301 Q. And if in the course of events they continued to receive notices? A. For the amount where we had delivered the merchandise we continued to receive the billing from them on --

Q. And if they did not pay, they would eventually receive a letter from Publishers' Protective Service; is that correct? A. Substantially so.

Q. Mr. Crawley, you testified a moment ago that this Commission's Exhibit No. 1, which is a photostat, the original was filed because it was a requirement for doing business here in the State of New York; that is correct, is it not? A. That's right.

* * * * * *

302 BY MR. TINCHER:

Q. Mr. Crawley, you stated you registered the name Publishers' Protective Service in 1935 as a requirement under New York law. Is it not true that that requirement is to do business under a trade name?

A. I believe that is so.

Q. Have you ever filed a certificate for doing business under a trade name in any State or under any other jurisdiction, other than the State of New York, as regards Publishers' Protective Service? A. No, I don't believe we have.

Q. What was your position in 1935 with William H. Wise & Company? A. Vice-President.

Q. How long had you been with the company at that time?

A. Which company are we talking about? There is several companies back there.

303 Q. William H. Wise & Company. A. I believe the case before here is a New York corporation.

Q. I am speaking of 1935, whatever company was in existence at that time. A. That was a Delaware company.

Q. How long had you been with that company, sir? A. Thirteen years.

Q. What was the address of that company? A. 50 West 47th Street.

* * * * * *

304 BY MR. TINCHER:

Q. Is this statement correct, which is found on Commission's Exhibit 3, the third paragraph: "They are planning on retaining counsel to handle this case for them" A. That is correct.

Q. And has this been done? A. Yes, sir.

Q. And have suits been brought? A. Yes, sir, now and then. You have got to remember that the whole reason, basic reason for having an organization like Publishers' Protective Service is, you have got a lot of two, three and four dollar accounts. No attorney will handle them.

MR. TINCHER: I do not believe it is responsive. I move it be stricken.

HEARING EXAMINER LAUGHLIN: I will strike it, and it may be brought out.

306 BY MR. TINCHER:

Q. Mr. Crawley, can you tell us who the other agencies were that have been employed for collecting accounts for Charming Woman?

307 A. Only one I can remember offhand is Bennett.

Q. Is that a man's name? A. Yes. It is Bennett Collection Agency down in Baltimore. Another one in Chicago. Another one in New York, but off the cuff right now I can't remember their names.

Q. If I suggest to you the one in Chicago was Creditors' Protective Service, 53 West Jackson, that may be correct? A. Yes.

Q. Is Creditors' Protective Service affiliated or connected in any manner with William H. Wise? A. Not that I know of.

Q. It is a completely independent organization? A. It is owned by somebody else, just like me.

Q. If I suggest a name to you, Mail Order Credit Reporting Association; Mail Order Credit Reporting Association, 15 West 38th Street; is this Association affiliated or otherwise connected with William H. Wise & Company in any way? A. I don't know what you mean by the word "affiliated". I think we are a partner with 13 other firms in the ownership.

Q. I am speaking of these two. A. I am talking about Mail Order creditors alone.

MR. SCOTT: May I interrupt. The question, Mr. Crawley, if I may interject, is whether or not the mail Order Creditors is in any way affiliated or is owned by William H. Wise; is that correct?

308 MR. TINCHER: Correct.

A. No.

BY MR. TINCHER:

Q. Do you personally have any interest in either one of these two companies? A. I do not.

* * * * * *

309 MR. TINCHER: I would like to say, with regard to Paragraph

7 of this complaint, the Commission rests its case.

MR. SCOTT: At this time I would like to make the following motions to dismiss:

First of all, there is, as has been adduced, no evidence on behalf of the Commission to show that the conduct of business has been adopted and a fictitious trade name been used, namely, Publishers' Protective Service.

On the contrary, the record will show that the certificate of doing business has been recorded. It is a bona fide organization. It is a matter of public record that the Publishers' Protective Service is in fact doing business for all to see.

Secondly, I think that the Commission has wholly failed to prove its case on Paragraph 7. There is not one scintilla of evidence offered that
310 there is any deceptive practices, as has been alleged here, in the collection of these accounts. There is no indication that this exhibit that has been offered as Exhibit 3 is anything more than or less than a letter sent to people who are delinquent in accounts, and the recipients of which, through the ordinary course of business, have been sent a letter for the purpose of collecting these accounts. That is a normal course of business of not only this concern but, I suggest, of many concerns.

The case here is rather, as I see it, a case of controversy of a private or personal nature. The remedies of the parties, if they would have any remedies at all, would be those remedies afforded to us by the courts as to whether the accounts were bona fide. It seems that there is no public interest involved as far as this Commission is concerned regarding the collection of accounts.

As a matter of fact, in the case of Flynn & Emrich Company vs. Federal Trade Commission, 52 Federal 2nd 836, they said in substance certainly Congress never intended the machinery of the Federal Trade Commission, certainly its operations should be made, should be set in motion for settlement of the private controversies when the courts can act. It was never intended that the Commission should act as a paid traffic officer in the highways of commerce. That was a type of case in which

311 they sent out letters telling them that he bought a particular product that they were buying, infringed, and they would go to court if they did, and they said in that case there is no public interest shown, therefore the Federal Trade Commission should not enter into the private controversy.

HEARING EXAMINER LAUGHLIN: What circuit was that?

MR. SCOTT: That is in the Fourth. I think it goes without saying on behalf of the Commission there has been no detriment shown against competitors, certainly of Publishers' Protective Service, and there has been no evidence adduced of a detriment to the debtor.

There has been no evidence to show a change of position with regard to his legal position in his relation to his creditor and the debtor.

I would suggest that there is no showing, further, of any coercion being used, or intimidation, and in that connection I would point to the case of the Butterick Publishing Company, et al. vs. Federal Trade Commission 85 Federal 2, page 522, in which they said, the Federal Trade Commission, "May not properly act to prevent those trade practices which merely are offensive to a suitable standard business morality." In other words, you may have a question as to whether or not you as an individual would write a letter which would indicate they would investi-

312 gate the individual and refer it to an attorney, but it would seem to me that the mere fact they have indicated that they are going to do all this, and then in the latter part of the Exhibit 3, say "If you doubt the statement, we suggest that you consult your attorney," there is no coercion there. Anybody knows that in the field of litigation there are many counsel available to these various debtors. Certainly they had a right to go and consult counsel as to whether or not any of the complaints they may have were of a legal nature, and could have been taken care of in the usual course of business by letting counsel take over and confer or contact the company in question.

Now one of the things that I think is outstanding in the Commission's case is that throughout the entire testimony, there is no proof that these debtors are the victims of any fraudulent plan. If your Honor please, I have looked at all the cases of the Federal Trade Commission which it

has had with regard to this element, where a collection agency has been brought in. I saw all of them that the reporting services have brought to my attention, and I find no case where the courts or the Federal Trade Commission have said, that the mere fact that you have a collection agency in and of itself -- and collecting accounts -- that in and of itself was unlawful.

313 All the cases that I have been able to peruse have been tied into where you have a bogus or fraudulent system to begin with, and these accounts are then by devious methods in many cases which I could cite, have signed notes or transferred notes to a so-called collection agency for the purpose of putting them in a position of being a bona fide purchaser without notice, and they have exhibited that to the debtor by saying "We do not know anything about your relation on the question of the transaction itself, we are in fact a bona fide purchaser for value, and that is all we are interested," and in many instances it stems from a completely whole cloth operation.

Now, certainly the evidence before your Honor shows that this is a bona fide operation and that these attempts through Publishers' Protective Service to collect these accounts are merely one step in an effort to exercise the judgment on any company, the right to go and try and see if they can collect delinquent accounts which are properly due and owing the Company for services or material rendered.

I find nothing in Paragraph Seven that would indicate that the Commission has proved any part of it. As a matter of fact, they allude in the second section of Paragraph Seven, to "said fictitious collection agency." I submit there is not evidence before your Honor that would indicate that this is a fictitious agency. On the contrary, it is one which is on record for everybody to see.

314 There has been no evidence before your Honor to indicate anybody has cancelled orders and then they have been compelled to pay for something they did not get. There is nothing in the record that anybody purchased anything from these companies as a result of the "erroneous and mistaken belief engendered by the respondents' deceptive practices, as herein

alleged."

In short, I say to this honorable body, that the Commission has wholly failed to sustain any part of Paragraph Seven, and for that reason, and if your Honor would like I could cite cases to sustain my position, that the Federal Trade Commission has never decided any case solely on the question of collection agencies. I will be glad to submit them; but I urge upon your Honor that this, the complaint, so far as Paragraph Seven, be dismissed in its entirety as not having been sustained in any manner, shape or form.

Further, that there has been no showing that there is any public interest involved in which to give the Federal Trade Commission the right to go into this matter, and that it is a case purely and simply where a controversy of a private or personal nature exists between the company and the debtor.

I further submit in my motion to dismiss, that the testimony of Mr. Crawley is, that this is a universal practice within the industry; and that if the Commission thinks wisely of it and believes that this is a
315 practice that should be dealt with by the Commission, that it be done so by a Fair Trade Practice Conference, which is the usual method entertained by the Federal Trade Commission where it is a practice universally within the industry.

However, I submit there is nothing before this Honorable Board that would remotely indicate any unlawful acts that had been done by the respondents, and for that reason I urge dismissal of this action.

* * * * * *

329 JOHN J. CRAWLEY, resumed the stand and testified as follows:

MR. SCOTT: In order that it may aid the Reporter, may the record show that Mr. Crawley, who has previously testified, is the president of William H. Wise and Company and its subsidiary organizations, and is the sole owner of the collection agency known as the Publishers' Protective Service.

333 * * * * * *

BY MR. SCOTT:

Q. Did Publishers' Protective Service have headquarters where customers and others could contact it? A. Yes.

Q With reference to the bookkeeping and administration at Publishers' Protective Service, did Publishers' Protective Service keep a separate bookkeeping record of the accounts that they collected?

* * * * * *

334 BY MR. SCOTT:

Q. Was the administration -- by that, I mean the answering of correspondence and tracking down the various accounts -- handled as a separate matter by Publishers' Protective Service? A. With respect to the accounts that had been assigned to it, yes.

Q. Mr. Crawley, directing your attention to testimony that you gave on the case in chief regarding the use of outside collection agencies, I ask you the question whether or not you can indicate the percentage of business that William H. Wise and Company had that went to Publishers' Protective Service.

* * * * * *

THE WITNESS: Somewhere between eight to ten percent of the gross original sales.

BY MR. SCOTT:

Q. What percentage of the business, then, went to these other collection agencies, such as you have testified in Chicago, New York, Baltimore, et cetera? A. Let me go back to the first question, because I wasn't sure how that was worded, because the total business that

335 went to all of these agencies, including Publishers' Protective Service, was eight to ten percent. We have a service at the end and at that time we serve these accounts that would seemingly produce the best results.

Q. Out of that eight or ten percent, will you kindly tell us what percentage Protective Service got and what percentage these other

collection agencies got? A. I'd say about a quarter. Twenty to twenty-five percent of the total went to Publishers' Service and about seventy-five percent went to outside agencies -- that is, the total of eight to ten percent.

Q. With regard to Commission's Exhibits 4 and 5, those are the exhibits dealing with notices sent out by William H. Wise and Company (indicating). I ask you whether or not any of those letters were ever sent out on the Charming Woman course of instruction.

* * * * * *

336 THE WITNESS: Neither one of these was ever sent out to the Charming Woman.

BY MR. SCOTT:

Q. When letters would be sent out by Publishers' Protective Service on Charming Woman accounts, what billhead would accompany the letter? A. Charming Woman.

* * * * * *

337 HEARING EXAMINER LAUGHLIN: My ruling will be that we are now confined to the strict issue of whether or not an improper method was used to collect honest and legitimate debts. There is no issue now before me by reason of the stipulation that any of the collections sought to be effectuated on behalf of indebtedness occurring out of courses of the Charming Woman character were illegal debts. The sole issue, as I interpret the facts now before me, is this: the debts, I must assume, are honest and proper and legal obligations. The sole question is, the means of collection, legal or illegal, based on the premise of legal obligations. I will not inquire into that subject. I think it is foreclosed by the prior stipulation and orders in this case.

MR. SCOTT: Very well.

HEARING EXAMINER LAUGHLIN: I think we are on that limited issue.

BY MR. SCOTT:

Q Getting back to the date of the organization of Publishers' Protective Service, I want to ask you again a question that was gone into

in the case in chief but which I do not think was actually clarified, and that is, as of the date 28th day of December, 1935, as indicated in Exhibit 1 for the Commission, whether or not Publishers' Protective at that time, when you organized, was created primarily for William H. Wise and Company and subsidiary accounts.

* * * * * *

338 THE WITNESS: My recollection of the objective at that time was to engage in the services of a number of publishers as part of this, so as to make it more self-sustaining, and I am sure I had some accounts from Nelson Doubleday, and it was then a mail order company of the Doubleday Company, and Classic Publishing Company, which was another mail order company, owned by Walter J. Black, and there may have been two or three others in that group at that time that I don't recall.

The main objective was to get something that would eliminate, well, a certain type of person, customers who were making a regular field day out of mail order coupon advertising, and we found, as we started, that quite a number of accounts were particularly bad on Wise andCompany books than there were bad with these other companies. The thing petered out because the thing was top-heavy for the Wise Company, and we were doing work and getting nowheres. We dropped the others because our accounts were ten times more than the others. Wise and Company accounts were made up of about 90 percent of the total after a while.

339 These book clubs would sell the same customers a book every month, and they would have a twentieth of the number of accounts that we had. We would sell one book at a time. We weren't getting enough out of it in comparison with the other fellows.

Q. Then I take it Publishers' Protective Service at that time was a general collection agency? A. That was the original plan.

* * * * * *

CROSS EXAMINATION

* * * * * *

341 BY MR. TINCHER:

Q. Mr. Crawley, you testified on direct examination that

Publishers' Protective Service was not utilized after a debt was protested;
342 is that correct? A. I don't think I used it that way.

Q. Am I paraphrasing you correctly? A. A case could be, as often happens, that people get a letter from Publishers' Protective Service, and they write back a red hot letter saying they paid this account, or something like that, and a check of the records with Wise and Company, or whatever company happened to be involved, would indicate that this was not so. It might get back into Publishers' Service again.

Q. Perhaps I should have included in my remark that I believe your answer was limited to accounts that allegedly had been canceled. If a customer wrote in saying that she had canceled her account, do I understand that Publishers' Protective Service sas no longer utilized at that point? A. That is correct.

Q. It is a fact, though, is it not, that the amounts which your organizations felt were due prior to the date of cancellation were still sought to be collected; is that not correct?

* * * * * *

343 THE WITNESS: Yes.

BY MR. TINCHER:

Q. Are we to understand your testimony, sir, that if a customer would write in denying the debt, at that point Publishers' Protective Service automatically withdrew from that particular case and was no longer used on that case? A. The expense was taken out of the Publishers' file and put in to whatever company it belonged to.

Q. For investigation? A. That's right. When it went into correspondence, the whole block of correspondence would go into stencil.

Q. Is it not also correct if after that investigation your organiza-
344 tion felt your position on that particular account was justified, that that account could, in the normal process go back to the files of the Publishers' Protective Service?

* * * * * *

345 THE WITNESS: It might go to another collection agency. I think there were two different letters that were sent out generally by the Publishers' Protective Service. If the second one had brought this

response, it might then go to some agency out in Chicago, or Baltimore. It would get down to a point where you would have to watch all of these agencies to make sure they pay off.

BY MR. TINCHER:

Q. Do I understand your testimony, sir, that Publishers' Protective Service, in the collection of accounts for Charming Woman and other Wise corporations, used two form letters? A. That is my recollection.

Q. Do I understand you further correctly that one was more or less a follow-up of the other? A. I don't remember exactly. I just looked at that code letter there and I didn't recognize it currently. It is "SML." That's just a single letter. There was only one letter in the series.

Q. At the time of Commission's Exhibit number 3? At the time that Commission's Exhibit number 3 was used? A. That's right.

346 Q. At some later time was there a series of letters?

A. At different times there were two. Sometimes it's only one. It gets back to the point I indicated before. It depends on the efficiency of the collection system.

* * * * * *

348 Q. You testified to a rather limited extent as to the operations of Publishers' Protective Service, the type of mail it gets, and its headquarters, and that sort of thing. What is your exact relationship with Publishers' Protective Service? Do you actually handle all the correspondence coming in and going out, the accounts, or is it a supervisory capacity, or what? A. You mean my personal relationship with it?

Q. Yes. A. It is somewhat distant from the actual handling of the account. We have people on the second floor who handle it in our

349 building. If customers come in to discuss the question or matter of Publishers' Protective Service, there is someone there to handle the matter and to dig into facts and figures and give the person whatever explanation seems advisable at the time.

Q. You say if a person comes in. How would the person know

the address of Publishers' Protective Service? A. Presumably, I would say their conscience bothered them from some previous letter from some other company.

MR. TINCHER: Mr. Examiner, I don't believe the witness understood my question. I think it is not responsive.

* * * * * *

BY MR. TINCHER:

Q. I would like to ask you, sir, how one of your customers would know the address of Publishers' Protective Service?

* * * * * *

350 THE WITNESS: They walk into the building of William H. Wise and Company and they seek a directory and it says on one of the lines, "Publishers' Protective Service, 2nd floor." They come to see Wise and Company, or Charming Woman, or somebody else.

* * * * * *

BY MR. TINCHER:

Q. There is nothing on Commission's Exhibit Number 3 or on Commission's Exhibit number 2, the envelope in which Commission's Exhibit number 3 arrives, containing an address for Publishers' Protective Service other than a post office box in Grand Central Station; is that not correct? Are you purposely omitting the fact that it says, "A duplicate statement of your account is attached herewith"? I am speaking of an address, sir. A. I am telling you that the address is on that statement.

Q. The address of William H: Wise or Charming Woman?

A. That is right. The customer came there -- as I answered in the

351 first place -- to talk to Wise and Company perhaps because of a guilty conscience.

Q. Do I take it, then, people come to see William H. Wise and not Publishers' Protective? A. That's what I answered, sir.

Q. Then you, in turn, send them to Publishers' Protective?

A. They inquire themselves.

Q. They inquire and you send them?

A. We say that there is Publishers' Protective Service here. I say that in one or two instances -- not generally, but I believe it happens frequently.

Q: What if a person is in a state that is so distant that he cannot come to see William H. Wise and Company? How does that person know the address of Publishers' Protective Service?

* * * * * *

352 THE WITNESS: He has a post office box number to write to right on the letterhead.

BY MR. TINCHER:

Q. And that is the only knowledge he has as to where Publishers' Protective Service is located; is that not correct?

* * * * * *

BY MR. TINCHER:

Q. Mr. Crawley, I asked you when I had you on the stand, if Publishers' Protective Service had a phone listing in the telephone book and you were unable to answer. Have you had a chance to look into this question since you were on the stand back in June? A. No, I didn't.

353 Q. Do I understand that, in dealing with Charming Woman exclusively, eight to ten percent of those accounts were assigned as delinquent accounts during the course of the existence of Charming Woman?

* * * * * *

THE WITNESS: Most of the accounts that are sold on approval are about eight to ten percent, as it is Charming Woman.

HEARING EXAMINER LAUGHLIN: You mean by that, Mr. Crawley, that irrespective of what books or magazines that might have been sold, the percentage runs about the same?

THE WITNESS: That is substantially correct.

HEARING EXAMINER LAUGHLIN: On the collection matters that are referred to?

THE WITNESS: On approval sale.

HEARING EXAMINER LAUGHLIN: As I understood you before, eight to ten percent go into the hands of either the one collection

agency or the others you referred to?

THE WITNESS: That is correct, sir.

BY MR. TINCHER:

354 Q. I understand also, Mr. Crawley, that you testified the accounts you consider delinquent were assigned among the several collection agencies so as to get the best results for the respondent. Could you tell us how that determination was made, as to which would give the best result?

* * * * * *

355 THE WITNESS: For example we had quite a number of accounts in an organization called the Amateur Builders Club that were a dollar each. It would be a much better deal for the company in that instance to send them all to a certain collection agency in Chicago, which makes a practice of getting certain types of accounts. It depends in some cases on the source of the orders. If the orders came from big ads such as we were talking about informally here before, we might find that it would be better to send those to a certain agency in Baltimore, because the circulation in that area was much larger than it would be in some other area, or we would send it to New York. It is possible, for example, to get as many as, well, 50,000 orders from a paper like the back cover of The News, the New York Sunday News Review section. There is no question about the answer, if that is proper, and the key number indicates it is big and they will all go to a New York agency. That is true of Chicago and it is true of Baltimore, Washington, Philadelphia, as one unit.

BY MR. TINCHER:

356 Q. But limiting ourselves to Charming Woman, which was sold nationally, what determination was made as to which collection agency would be used to collect accounts of Charming Woman?

THE WITNESS: If a customer of Charming Woman, in the initial instance, got to be $5 and the account hadn't been paid, it would go to Publishers' Protective Service. If it was two or one dollar, it may go to another agency. Dollar volume.

BY MR. TINCHER:

Q. Is that the only distinction that was made between the selection of collection agencies? A. That is almost the only distinction made on all of them. There are certain collection agencies that just won't touch
357 dollar accounts, two dollar accounts, three dollar accounts, and so forth.

Q. As a matter of fact, is it not a fact that Publishers' Protective Service, the collection agency used in Chicago, and other agencies were all used to collect, or attempted to collect, various accounts? Do you understand my question. A. Yes, I do. Not to my knowledge, but I am not sure of that. It would depend on the dollar volume of the individual account, and it is quite possible that the answer is Yes. As I recall it, that Charming Woman was a twelve-dollar account, or a six-dollar account.

MR. SCOTT: Six.

THE WITNESS: Whatever it was, it would be in all three categories. Publishers' Protective, Chicago Mail Order, and Bennett.

BY MR. TINCHER:

Q. Is it not true, Mr. Crawley, that persons who had purchased courses for the Charming Woman, and whom you later felt to be delinquent, had received collection notices not only from Publishers' Protective Service, but from other collection agencies that you have described in your testimony as well? A. I would guess so, but of my own knowledge, I don't know.

358 Q. In other words, there have been cases involving Charming Woman and where all three of the collection procedures utilized have been involved with a single customer? A. I doubt that very much.

Q. If I would suggest some names to you, would that refresh your memory? A. Names of collection agencies?

Q. No, sir. Names of individuals. A. I wouldn't know them from a hole in the wall.

* * * * * *

BY MR. TINCHER:

Q. Could you tell me the name of the individual in your concern

who would be able to provide us with that information, sir? A. What information?

Q. The information as to whether or not a customer of the Charming Woman received collection notices from Publishers' Protective Service and from other collection agencies used by Charming Woman? A. I don't believe I can tell that specifically, sir, because if you would stop to figure out the mechanics of handling it, you will see why. If you take a group of five thousand accounts and send them to Chicago, why, we don't keep a record of those.

* * * * * *

362 BY MR. TINCHER:

Q. I hand you Commission's Exhibits number 4 and number 5, about which you testified in answer to Mr. Scott's questions (indicating). Are we to understand that Commission's Exhibits number 4 and number 5 have been used by William H. Wise Company in the collection of accounts but have not been used by William H. Wise Company or by Charming Woman in the collection of Charming Woman accounts? A. That is correct.

Q. Could you tell us the reason, sir, that has been used by other corporations under William H. Wise's control but not by Charming Woman?

* * * * * *

363 THE WITNESS: Obviously these letters will have William H. Wise and Company on the letterhead. The customer never heard of William H. Wise and Company if we were using another name, another corporation, or another corporations' products.

BY MR. TINCHER:

Q. And that, sir, is your complete explanation? A. Yes, sir.

Q. Referring to your testimony now as to the date of the beginning of William H. Wise in 1935 and early 1936, where was Publishers' Protective Service located at that time? A. I think it was at 37 West 47th Street. I am not quite certain of that. It was a building across the street.

Q. That also at that time was the location of William H. Wise Company, was it not? A. No, sir, it was not.

Q. Where was William H. Wise Company located? A. 50 West 47th Street, where it is.

Q. Was any corporation affiliated with or connected with William H. Wise Company located at 37 West 47th Street? A. Yes.

364 Q. What corporation was that? A. I think it was the National Educational Alliance.

Q. It is a fact, is it not, sir, that Publishers' Service shared office space at 37 West 47th Street with National Educational Alliance?

* * * * * *

THE WITNESS: It probably did. I am not sure of that. It is dating quite a way back. I know it was necessary that, having these other companies involved, we keep it apart from the main offices of Wise and Company.

BY MR. TINCHER:

Q. Your answer is, it probably did? A. I think it did. I am not sure.

* * * * * *

377 MR. SCOTT: ***That is the first part that I want to get to with regard to my motion because when you get to the second paragraph of paragraph 7 of the complaint, I think that you now have before you enough to strike, and I now move to strike that portion of the complaint which deals with the so-called persons who have canceled orders and then compelling them to pay for said costs, even though purchased as a result of erroneous and mistaken belief engendered by respondents' deceptive practices, because there is no evidence in the record now that anybody was compelled to pay for something they didn't actually owe.

Therefore, that second paragraph goes out the window, because it is predicated on the theory that this organization, in some wise, collected from these people by coercion and intimidation for the courses of instruction -- and we can only allude that that refers to Charming Woman -- and compelled them to pay for canceled orders which were purchased as a result of an erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged.

I submit that, on that second phase of the paragraph, there is no evidence on that score whatsoever, and therefore, in addition to my motion to dismiss the entire count, I now move to strike that portion as not having been proved in any respect, and therefore should be eliminated
378 in the consideration of this case.

HEARING EXAMINER LAUGHLIN: You mean all the language in the second paragraph of paragraph 7?

MR. SCOTT: That is right.

HEARING EXAMINER LAUGHLIN: I will say right now that I will strike these words between the commas including the commas, also, in line 3 of the second paragraph of paragraph 7 of the informal order or initial decision, the language stricken being: "Comma as well as persons who have canceled orders therefor comma" -- but the rest of that language I will leave in, since it ties to the first paragraph of paragraph 7.

FEDERAL TRADE COMMISSION

COMPLAINTS

Docketed: January 17, 1955

In the matter of Wm. H. Wise Co., Inc., et al — No. 6288

Respondents	Complaint Served	Answer Filed
1. Wm. H. Wise Co., Inc., 50 West 47th Street, New York, N.Y.	1-27-55	2-15-55
	Initial Decision Served	Comm. Decision Served
	7-19-55 **6-14-56	*8-29-55 11-13-56
	Compliance Report Filed	For Court Attorneys, See Court Proceedings
	*10-31-55	Thomas B. Scott, 716 Evans Building Washington 5, D. C.
2. John J. Crawley, President, Wm. H. Wise Co. Inc., 50 West 47th Street New York, N.Y.	Complaint Served	Answer Filed
	1-27-55	2-15-55
	Initial Decision Served	Comm. Decision Served
	7-19-55 **6-14-56	*8-29-55 11-13-56
	Compliance Report Filed	For Court Attorneys, See Court Proceedings
	*10-31-55	Thomas B. Scott 716 Evans Building Washington 5, D. C.
3. Charming Woman, Inc., 37 West 47th Street, New York, N.Y.	Complaint Served	Answer Filed
	1-27-55	2-15-55
	Initial Decision Served	Comm. Decision Served
	7-19-55 **6-14-56	*8-29-55 11-13-56

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* partial order to cease and desist - 8-22-55

** Initial Decision filed 5-29-56

Respondents	Compliance Report Filed	For Court Attorneys, See Court Proceedings
3. Charming Woman, Inc. (continued)	*10-31-55	Thomas B. Scott 716 Evans Building Washington 5, D. C.
4. John J. Crawley, President Charming Woman, Inc., 50 West 47th Street, New York, N. Y.	Complaint Served 1-27-55 Initial Decision Served 7-19-55 **6-14-56 Compliance Report Filed *10-31-55	Answer Filed 2-15-55 Comm. Decision Served *8-29-55 11-13-56 For Court Attorneys, See Court Proceedings Thomas B. Scott 716 Evans Building Washington 5, D. C.

Act — Charge--Commodity--Trade Name

F.T.C. — False claims: Trial offer - Collection agency - Contracts - Cancellation - Misrepresentation - Agreements - Enrollment - False and misleading advertising - Education - Beauty culture - Correspondence -

Hearings

New York, N.Y. - June 28, 1955
- Feb. 15, 1956

Washington, D. C. - Oct. 2, 1956 (Arg. Comm.)

Hearing Examiner: E. F. Haycraft - 1-17-55 to 4-28-55
L. H. Laughlin - 4-29-55

Counsel Supporting Complaint: W. L. Pencke - 8-26-54 - 4-4-55
W. R. Tincher - 4-5-55

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* partial order to cease and desist - 8-22-55

** Initial Decision filed 5-29-56

Hearing Examiner's order closing case - 5-17-56

6-30-55 Initial Decision Filed (as to certain charges only)

5-29-56 Initial Decision Filed

Final Action:

11-1-56 Final order (adopting hearing examiner's decision and order to cease and desist)
and order to file report of compliance.
Opinion - Commission - Attached.

8-22-55 Decision of the Commission (adopting Hearing Examiner's Initial Decision based on stipulation for consent order to cease and desist as to certain charges only) and
Order to file Report of Compliance;
effective 8-19-55.

HISTORY

Initial hearing set for:
March 15, 1955, at 10 a.m., New York, N.Y., Federal Trade Commission Office, United States Court House Foley Square.

2-28-55 Hearing Examiner's notice designating Room 3004 for initial hearing set for March 15, 1955, at 10 a.m., New York, N.Y., United States Court House, Foley Square.
Served: Thomas B. Scott - 3-2-55

3-7-55 Motion by respondents to postpone initial hearing to May 2, 1955.

3-9-55 Answer by counsel supporting complaint to motion by respondents to postpone initial hearing.
Served: Thomas B. Scott - 3-11-55

3-9-55 Hearing Examiner's order postponing initial hearing set for March 15, 1955 to May 2, 1955, at 2 p.m., (local time), New York, N.Y., Room 3004, United States Court House, Foley Square.
Served: Thomas B. Scott - 3-10-55

HISTORY

4-14-55	Motion by counsel supporting complaint to postpone initial hearing set for May 2, 1955, to May 23, 1955, at 2 p.m., New York, N.Y. Served: Thomas B. Scott - 4-19-55
4-26-55	Hearing Examiner's order postponing initial hearing set for May 2, 1955 to May 23, 1955 (EDT), New York, New York, Room 3004, United States Court House, Foley Square. Served: Thomas B. Scott - 4-28-55
4-29-55	Order by Director of Hearing Examiners appointing substitute hearing examiner L. H. Laughlin. Served: Thomas B. Scott - 5-2-55
5-6-55	Hearing Examiner's order canceling initial hearing set for May 23, 1955, and resetting initial hearing June 6, 1955 at 2 p.m. (edt), New York, N.Y., Room 3004, United States Court House, Foley Square. Served: Thomas B. Scott - 5-10-55
5-26-55	Motion by respondents to continue initial hearing from June 6, 1955, to June 28, 1955, at same hour and place.
5-27-55	Hearing Examiner's order canceling initial hearing set for June 6, 1955, and resetting hearing, June 28, 1955, at 2 p.m. (edt), New York, N.Y., Room 3004, United States Court House, Foley Square. Served: Thomas B. Scott - 6-1-55
6-3-55	Stipulation for consent order to cease and desist as to certain charges only.
3-30-55	Hearing Examiner's Initial Decision based on stipulation for consent order to cease and desist as to certain charges only. Served: CSC (Tincher) - 7-18-55 Thomas B. Scott - 7-19-55
8-10-55	Brief by respondents in support of motion to dismiss.

HISTORY

8-22-55 Decision of the Commission (adopting Hearing Examiner's Initial Decision based on stipulation for consent order to cease and desist as to certain charges only) and Order to file Report of Compliance; effective 8-19-55.

9-9-55 Brief by counsel supporting complaint in opposition to respondents motion to dismiss.
Served: Thomas B. Scott -- 9-14-55

10-10-55 Brief by respondents - Reply to brief by counsel supporting complaint in opposition to motion to dismiss complaint.

10-19-55 Hearing Examiner's order overruling objections by respondents and admitting Commissions Exhibits 4 and 5 into evidence.
Served: Thomas B. Scott - 10-21-55

10-24-55 Hearing Examiner's order denying motion by respondents to dismiss complaint and fixing hearing November 21, 1955, at 10 a.m. (local time), New York, N.Y., Office of the Federal Trade Commission in the United States Court House, Foley Square, with hearing room to be later designated.
Served: Thomas B. Scott - 10-26-55

11-1-55 Motion by respondents for extension of time to November 28, 1955 for filing appeal from Hearing Examiner's orders denying motion to dismiss, and admitting Commission's Exhibits 4 and 5; and requesting postponement of hearing set for November 21, 1955.

11-7-55 Order extending time to November 28, 1955 for filing appeal by respondents from Hearing Examiner's orders and denying request for postponement of hearing set for November 21, 1955, with understanding that such postponement may be requested of the hearing examiner.
Served: Thomas B. Scott - 11-9-55

HISTORY

11-9-55 Motion by respondents for postponement of hearing set for November 21, 1955 to an indefinite time or until such time as the Commission has ruled on respondents interlocutory appeal.

11-10-55 Hearing Examiner's order cancelling hearing set for November 21, 1955, with further hearing to be held on ten days notice.

Served: Thomas B. Scott - 11-14-55

11-28-55 Notice of appeal, request for leave to file interlocutory appeal from orders of Hearing Examiner and appeal brief filed by respondents, with request for oral argument thereon.

12-8-55 Brief by counsel supporting complaint - Answer to appeal by respondents from rulings of Hearing Examiner.

Served: Thomas B. Scott - 12-12-55

12-27-55 Order denying appeal by respondents from hearing examiner's ruling denying motion to dismiss, and admitting Commission exhibits four and five into evidence.

Served: Thomas B. Scott - 12-29-55

1-5-56 Hearing Examiner's order setting hearing February 15, 1956 at 10 a. m., (local time), New York, N. Y., Room 3004, Federal Trade Commission Office, United States Court House, Foley Square.

Served: Thomas B. Scott - 1-9-56

2-17-56 Hearing Examiner's order fixing March 15, 1956 as the date on or before which counsel shall submit proposed findings, conclusions and order.

Served: Thomas B. Scott - 2-21-56

3-14-56 Proposed findings, conclusion and order by respondents.

3-15-56 Proposed findings, conclusions and order by counsel supporting complaint.

Served: Thomas B. Scott - 3-19-56

HISTORY

5-17-56 Hearing Examiner's order closing case.
Served: Thomas B. Scott - 5-18-56

5-29-56 Hearing Examiner's rulings on proposed findings and conclusions by counsel.
Served: Thomas B. Scott - 6-14-56

5-29-56 Hearing Examiner's Initial Decision and order to cease and desist.
Served: CSC (Tincher) - 6-13-56
Thomas B. Scott - 6-14-56

6-21-56 Notice of appeal by respondents from Hearing Examiner's Initial Decision.

6-25-56 Motion by respondents for extension of time to August 15, 1956 for filing appeal from Hearing Examiner's Initial Decision.

6-28-56 Answer by counsel supporting complaint to motion by respondents for extension of time for filing appeal from Hearing Examiner's Initial Decision.
Served: Wm. H. Wise, Co., Inc. - 7-2-56
John J. Crawley - 7-2-56
Charming Woman, Inc. - 7-2-56
John J. Crawley - 7-2-56
Thomas B. Scott - 7-2-56

7-2-56 Order extending time to August 15, 1956, for respondents to file appeal from Hearing Examiner's Initial Decision.
Served: Wm. H. Wise Co., Inc. - 7-5-56
John J. Crawley - 7-5-56
Charming Woman, Inc. - 7-5-56
John J. Crawley - 7-5-56
Thomas B. Scott - 7-5-56

8-15-56 Brief by respondents - Appeal from hearing examiner's initial decision.

HISTORY

8-27-56 Notice of oral argument on appeal by respondents from hearing examiner's initial decision, October 2, 1956, at 2 p.m., Washington, D.C.

Served: Wm. H. Wise Co., Inc. - 8-29-56
John J. Crawley - 8-29-56
Charming Woman, Inc. - 8-29-56
John J. Crawley - 8-29-56
Thomas B. Scott - 8-29-56

9-12-56 Motion by counsel supporting complaint for extension of time to September 24, 1956 to file answer to appeal from Hearing Examiner's Initial Decision.

Served: Wm. H. Wise Co., Inc. - 9-14-56
John J. Crawley - 9-14-56
Charming Woman, Inc. - 9-14-56
John J. Crawley - 9-14-56
Thomas B. Scott - 9-14-56

9-17-56 Order extending time to September 24, 1956 for counsel supporting complaint to file answer to appeal from hearing examiner's initial decision.

Served: Wm. H. Wise Co., Inc. - 9-21-56
John J. Crawley - 9-20-56
Charming Woman, Inc. - 9-20-56
John J. Crawley - 9-20-56
Thomas B. Scott - 9-19-56

9-21-56 Brief by counsel supporting complaint - Answer to appeal by respondents from hearing examiner's initial decision.

Served: Wm. H. Wise Co., Inc. - 9-25-56
John J. Crawley - 9-25-56
Charming Woman, Inc. - 9-25-56
John J. Crawley - 9-25-56
Thomas B. Scott - 9-25-56

HISTORY

10-2-56 Argument heard on appeal by respondents from hearing examiner's initial decision.

11-1-56 Order denying appeal by respondent from hearing examiner's initial decision. (contained in Final Order dated 11-1-56)

11-1-56 Final order (adopting hearing examiner's initial decision and order to cease and desist) and order to file report of compliance. Opinion - Commission - Attached. Served: Thomas B. Scott - 11-13-56

12-31-56 Petition to review--(filed by Wm. H. Wise Company, Inc., et al) (for Court record, see Sheet 3)

Office - Supreme Court, U.S.
FILED
AUG 13 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 374

WM. H. WISE COMPANY, INC., THE CHARMING WOMAN, INC., JOHN J. CRAWLEY, Individually and as an officer of said corporations, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

THOMAS B. SCOTT
LAWRENCE J. SIMMONS
Attorneys for Petitioners
716 Evans Building
Washington, D. C.

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OTHER AUTHORITIES CITED

Black's Law Dictionary, Fourth Edition, page 751 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

WM. H. WISE COMPANY, INC., THE CHARMING WOMAN, INC., JOHN J. CRAWLEY, Individually and as an officer of said corporations, *Petitioners,*

v.

FEDERAL TRADE COMMISSION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Earl Warren, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Wm. H. Wise Company, Inc., The Charming Woman, Inc., and John J. Crawley, individually and as an officer of said corporations, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of

Appeals for the District of Columbia Circuit, dated June 6, 1957.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit has not yet been reported. A copy is appended as Appendix A.

The opinion of the Federal Trade Commission has not yet been reported. (R. 41).

STATEMENT OF JURISDICTIONAL GROUNDS

The opinion of the United States Court of Appeals for the District of Columbia Circuit and its judgment in favor of Respondent was made and entered June 6, 1957. No petition for rehearing was filed.

This Court has jurisdiction of the questions presented under the provisions of Title 28, U.S.C. Sec. 1254.

QUESTIONS PRESENTED

1. Should the law governing general factual situations arising under the Federal Trade Commission Act, be left in such posture that the decisions of this Court and of the United States Courts of Appeals for the Tenth, Seventh, Sixth, Fourth, Third and Second Circuits are directly in conflict with the decisions of the District of Columbia Circuit?

2. Does a collection agency have a duty to disclose to debtors any identity of ownership or control existing between the creditor and the collection agency and does a failure to do so constitute deception sufficient to satisfy the public interest requirement of Section 5 of the Federal Trade Commission Act?

3. Is the Order, directed against Petitioners and their agents, representatives and employees, directly or through any corporate or other device, lacking in specificity and definiteness and, being too broad, invalid?

STATUTES INVOLVED

The statutes directly involved are Title 15 U.S.C. Sec. 45(a)(1)(6):

> Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

and Title 5 U.S.C. Sec. 1006(c):

> Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. * * * No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. * * *

STATEMENT

The Federal Trade Commission on January 7, 1955, issued its complaint, charging Petitioners with deceptive practices. Prior to formal hearings, a stipulation was entered into on all matters in the complaint excepting Paragraph Seven which reads:

> "In the course and conduct of said business as aforesaid, respondents have adopted and use a

fictitious trade name, to-wit, Publishers Protective Service, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Publishers Protective Service is an independent and separate organization employed to collect accounts which are in arrears."

"In truth and in fact said fictitious collection agency is operated solely by respondent, John J. Crawley, and is used by respondents to coerce and intimidate purchasers of said course of instruction, *as well as persons who have cancelled orders therefor,* and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged."[1]

After formal hearings, the Examiner issued his initial decision containing findings, conclusions and an order on the limited matters alleged in Paragraph Seven of the complaint. The Commission on November 1, 1956, denied Petitioners' appeal and adopted the findings, conclusions and Order contained in the initial decision. The Order requires Petitioners and "their agents, representatives and employees, directly or through any corporate or other device" to cease and desist from: (1) Using fictitiously any trade or corporate name in collecting past-due accounts; and (2) Implying that such fictitious collection agency is an independent organization engaged in the business of collecting past-due accounts.

Thereafter Petitioners sought review before the United States Court of Appeals for the District of Columbia Circuit, upon various grounds, summarized

[1] Petitioners moved to dismiss this entire paragraph because of lack of evidence. Only the italicized portion was stricken, however.

as follows: Public interest was lacking; the Order is lacking in definiteness and specificity and, being too broad, is invalid; the findings and conclusions are not supported by substantial evidence; there is no duty on the part of collection agencies to disclose to the debtor any identity of ownership or control existing between the creditor and the collection agency. That Court on June 6, 1957 filed its brief opinion affirming the Order of the Commission.

No debtor or other member of the public appeared as a witness at the hearing. The entire evidence consisted only of five exhibits and the testimony of John J. Crawley, individual Petitioner herein. Two of the exhibits pertain to the registration of the trade name, "Publishers Protective Service," and the remaining three are samples of collection letters used by Petitioners.

Wm. H. Wise Company, Inc. and its wholly owned subsidiary, The Charming Woman, Inc., are engaged in the publishing business and are corporations organized under the laws of New York, with offices in New York City, the former at 50 West 47th Street and the latter at 37 West 47th Street. John J. Crawley owned *only* 6 or 7 of the 73,000 shares of the issued capital stock of Wm. H. Wise Company, Inc., and is President of both corporations.

Publishers Protective Service, an unincorporated company, is solely owned by John J. Crawley and has been since it was organized in December, 1935. It was registered on that date as a collection agency pursuant to the laws of New York and has been in that business ever since. Until the last few years it collected accounts for others, such as Doubleday, Book-of-

the-Month Club, Greystone Press, etc., but now, due to the volume of their business, collects only for the two corporate Petitioners.

The corporate Petitioners collect their accounts by mailing to their debtors a series of letters varying in friendliness, which the Commission found contained no harsh or threatening language. At the time this series of letters is mailed, it is not known whether a collection agency will be required. Should one be required, Publishers Protective Service is engaged for only 20 to 25% of the claims and other agencies for the remainder. Only 8 to 10% of the total business of both corporations is sent out for collection. No delinquent account is ever sold or transferred. Publishers Protective Service always encloses with its collection letters a copy of the original account showing the amount due and the name of the creditor.

No debtor objected to this method of collection. Indeed, the Commission specifically found that no debtor did anything he would not otherwise have done or legally be required to do, or was deprived of any defense and that the debts which Petitioners sought to collect were in fact lawful, just and demandable.

REASONS RELIED UPON FOR GRANTING THE WRIT

I

THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, IN THE INSTANT CASE, IS IN DIRECT CONFLICT WITH THE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES AND WITH THE DECISIONS OF THE UNITED STATES COURTS OF APPEALS FOR THE TENTH, SEVENTH, SIXTH, FOURTH, THIRD AND SECOND CIRCUITS ON THE SAME GENERAL MATTER OF FEDERAL LAW, AND ON THE SAME GENERAL FACTUAL SITUATION

The United States Court of Appeals, District of Columbia Circuit, in affirming, cited no opinion of any court nor the opinion of the Federal Trade Commission. No case has been called to Petitioners' attention which, because of the factual similarity, would serve as an elucidation of the Commission's conclusions. The Commission founded its opinion upon cases which are not in any manner factually similar to the instant matter. Those cases involved some element of fraud, entrapment, enticement, swindle, or the "skip-tracer" type of practice. Had the basic and concrete principles contained in the cases cited below been applied, the court would have concluded that (a) public interest is lacking, (b) there is no deception or misrepresentation, and (c) the Order is lacking in specificity and definiteness and, being too broad, is invalid.

Public Interest Is Lacking

The Commission does not have jurisdiction unless there is a *specific and substantial* public interest. This requirement is not satisfied by proof that there has been misapprehension and confusion on the part of purchasers, or even that they have been deceived. *F.T.C.* v. *Klesner*, 280 U.S. 19, 50 S. Ct. 1, 74 L. Ed. 138 (1929), also *F.T.C.* v. *Royal Milling Co.*, 288 U.S.

212, 53 Sup. Ct. 335, 77 L. Ed. 706 (1933). Here there is no evidence that debtors were under misapprehension or confusion or even that they had been deceived. On the contrary, the Commission specifically found that the debts were lawful, just and demandable, and that the collection letters were friendly, containing no harsh or threatening language. These letters were mailed before Petitioners employed a collection agency. There is nothing wrong, immoral or deceptive in the content of these letters—even in those phrases to which the Commission objects, stating that the matter would be turned over to a "Collection agency" or an "outside department" which would be an "unpleasant experience". A creditor has the right to pursue vigorously his debtor so long as in the chase he practices no fraud or entrapment. Petitioners are not guilty of this or any other type of offensive conduct. The form or content of these letters may offend the Commission but that does not justify the issuance of the Order. There is no public interest in preventing trade practices which are merely offensive to a suitable standard of business morality. *F.T.C.* v. *Gratz*, 253 U.S. 421, 40 S. Ct. 572, 64 L. Ed. 993 (1920); *Butterick Publishing Co.* v. *F.T.C.*, 85 F. 2d 522 (2nd Cir. 1936) citing *Northam Warren* v. *F.T.C.*, 59 Fed. 2d 196. No debtor objected to this method of collection. On the contrary as stated above the debts were lawful, just and demandable and no debtor did anything he would not otherwise have done or legally be required to do, nor was he deprived of any defense. Public interest therefore is lacking because the natural and probable result of the challenged practice did not cause any debtor to do anything he would not otherwise have done. *Bockenstette* v. *F.T.C.*,

134 F. 2d 369, (10th Cir. 1943); *Pep Boys* v. *F.T.C.*, 122 F. 2d 158 (3rd Cir. 1941); *Bucksbaum and Co.* v. *F.T.C.*, 160 Fed. 2d 121 (7th Cir. 1947). Even on the theory that this is a controversy between a debtor and Petitioners as a creditor, public interest is still not evident because the Commission has no jurisdiction to regulate, settle or determine private rights. *F.T.C.* v. *Gratz*, supra; *Flynn and Emrich Co.* v. *F.T.C.*, 52 F. 2d 836 (4th Cir. 1931).

For the first time, the Commission asserts that Collection agencies, such as Publishers Protective Service, have a duty to disclose to debtors any indentity of ownership or control between the creditor and the collection agency, failure to do so being sufficient, in some mysterious way, to establish injury to the public generally, in spite of the fact that there was no evidence of injury to any debtor. This theory seems to be based upon the fact that a debtor upon receiving a letter from Publishers Protective Service has no way of knowing that John J. Crawley, its sole owner, is also President of the corporate Petitioners. This theory conflicts with the *Bockenstette* and *Pep Boys* cases, supra, because there is no evidence that any debtor having this information would do anything he would not otherwise have done or legally be required to do. Knowledge of the relationship existing between the creditor and the collection agency will not change the character of the debt, stifle competition or injure competitors. It can make no possible difference to the debtor whether he receives a letter from the creditor or the collection agency. If the debt is not owed, he may resist payment and raise all defenses available since he has been deprived of none, or since the debts were found to be legitimate he will pay the

debt. Publishers Protective Service always encloses with its collection letters a copy of the original statement of account, thus a debtor is always acquainted with the nature and amount of the debt and the name of the creditor. This is certainly not duplicitous conduct, but open, honest and fair.

Public interest is lacking and the opinion below conflicts with the rulings in other circuits upon the same point of law.

There Is No Deception or Misrepresentation

Paragraph Seven of the Complaint reads:

> "In the course and conduct of said business as aforesaid, respondents have adopted and use a fictitious trade name, to wit, Publishers Protective Service, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Publishers Protective Service is an independent and separate organization employed to collect accounts which are in arrears.
>
> "In truth and in fact said fictitious collection agency is operated solely by respondent John J. Crawley, and is used by respondents to coerce and intimidate purchasers of said course of instruction * * * and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged."

The debts were not merely allegedly delinquent but were, as the Commission found, lawful, just and demandable. Nor is Publishers Protective Service a "fictitious collection agency" as alleged, but a bona fide one, separate and distinct from the other Petitioners. It was registered pursuant to law in New York City in 1935 as a collection agency and has been

such ever since, collecting for many publishers until the last 6 or 8 years, but since then only for the corporate Petitioners because of the volume of their business. It has a separate mailing address and is listed in the directories of the two buildings occupied by the two corporate Petitioners. It keeps separate records though they are serviced by employees of Wm. H. Wise Company, Inc. for reasons of efficiency. It is clear that Publishers Protective Service is independent and distinct from the other Petitioners and is not fictitious which is defined to mean "feigned, imaginary, not real, counterfeit, false, not genuine, non-existent". *Kropp Forge Company* v. *Employers Liability Association Co.*, 159 F. 2d 536 (7th Cir. 1947); Black's Law Dictionary, Fourth Edition, p. 751.

It is true that John J. Crawley solely owns and operates Publishers Protective Service and that it is registered in his name. This is not fraud, deception, misrepresentation or coercion because an individual may adopt a trade name for business purposes in the absence of fraud or prohibiting statute. *Kropp Forge Company* v. *Employers Liability Association Co.*, supra. The ownership and control of Publishers Protective Service is separate from the ownership and control of the two corporations. John J. Crawley owned *only* 7 of the 73,000 shares of Wm. H. Wise Company, Inc. and The Charming Woman, Inc. is owned wholly by Wm. H. Wise Company, Inc. Crawley is President of both corporations but as such does not control them since control is vested in the Board of Directors.

Therefore the complaint should have been dismissed because of failure of proof as required by Sec. 7(c) of the Administrative Procedure Act, 5 U.S.C. Sec.

1006(c). See also *F.T.C.* v. *Gratz,* supra; *Ohio Leather Co.* v. *F.T.C.,* 45 F. 2d 39 (6th Cir. 1930).

The Order Is Invalid

The Order is directed against Petitioners and their "agents, representatives and employees, directly or through any corporate or other device," and is in direct conflict with *R. J. Reynolds* v. *F.T.C.,* 92 F. 2d 535, 539 (7th Cir. 1951) wherein the words, "officers, agents, representatives and employees," were struck from a similar order. For these reasons, the Order is lacking in specificity and definiteness and, being too broad, is invalid and conflicts with a ruling on a similar order in the Seventh Circuit.

II

THE FEDERAL TRADE COMMISSION ACT DOES NOT AUTHORIZE THE FEDERAL TRADE COMMISSION TO REQUIRE THAT A COLLECTION AGENCY DISCLOSE TO A DEBTOR IDENTITY OF OWNERSHIP OR CONTROL, EITHER IN WHOLE OR IN PART, BETWEEN THE CREDITOR AND THE COLLECTION AGENCY

The essence of the Commission's holding is that Publishers Protective Service is not a bona fide independent collection agency, but a fictitious or make believe organization operating under the control of and for the benefit of other organizations with which the individual Petitioner, John J. Crawley, is associated. As hereinbefore more fully set forth, Publishers Protective Service is an independent organization separate from the corporate Petitioners and is not fictitious nor has it engaged in fraudulent, deceptive or sinister methods in its business.

For the first time the Commission is asserting that collection agencies, such as Publishers Protective Service, have a duty to disclose to debtors any identity of

ownership or control between the creditor and the collection agency, failure to do so being sufficient, in some mysterious way, to establish injury to the public generally, in spite of no evidence of injury to any debtor. (*Bucksbaum* v. *F.T.C.*, supra, requires showing of detriment to public interest.) This theory seems to be based upon the fact that a debtor upon receiving a letter from Publishers Protective Service has no way of knowing that John J. Crawley, its sole owner, is also President of the two corporations. Since there is no evidence that any debtor did anything he would not otherwise have done or legally be required to do, this theory is clearly in conflict with the rulings in *Pep Boys* and *Bockenstette*, supra. The public interest clause of Section 5 of the Federal Trade Commission Act does not permit the Commission to act as a clearing house to settle everyday private quarrels of business, *F.T.C.* v. *Gratz; Flynn and Emrich* v. *F.T.C.*, both supra; or to prevent trade practices which are merely offensive to a suitable standard of business morality, *F.T.C.* v. *Gratz; Butterick Publishing Co.* v. *F.T.C.*, both supra.

Petitioners seek to collect valid debts by legitimate methods which they have a right to do. There was no fraud, deception, misrepresentation or coercion either in the methods used or in the ownership or control of Petitioners. The public is not concerned whether a debtor is informed that a collection agency is owned or controlled by the same person who is president of the creditor. Failure to disclose this knowledge would not change the character of the debt, stifle competition or injure a competitor. Certainly it could make no possible difference to the debtor whether he received a letter from the creditor, from Publishers Protective Service or from another collection agency, because if he doesn't owe the debt, he will resist payment and if

he owes it, he will probably pay it. The Commission may carry its theory to absurdity, to cases where blood relatives are employed by the collection agency and the creditor, to an attorney who has a stock ownership in the creditor and represents the collection agency in a professional capacity. Degrees of relationship by consanguinity or marriage may also have to be disclosed to the debtor. It is impossible to comply in any practical way with the Order and still stay in business. Petitioners' dilemma is administratively imposed without substantial evidence, valid reasons or statutory authority. This is truly regulation running riot.

No reported opinion of any court, not even of the Commission, has gone so far as the Commission has in this case. Petitioners have been deprived of their rights and guarantees to due process of law under the Fifth Amendment to the Constitution of the United States.

III

THE ORDER DIRECTED AGAINST PETITIONERS AND THEIR AGENTS, REPRESENTATIVES AND EMPLOYEES, DIRECTLY OR THROUGH ANY CORPORATE OR OTHER DEVICE, IS LACKING IN SPECIFICITY, DEFINITENESS AND, BEING TOO BROAD, IS INVALID

The Order is directed against Petitioners and their "agents, representatives and employees directly or through any corporate or other device." In *R. J. Reynolds* v. *F.T.C.*, 92 F. 2d 535, 539 (7th Cir. 1951) the words, "officers, agents, representatives and employees" were struck from a similar order because as the court said:

> "We can see no logical basis for the indiscriminate inclusion, in an order directed against a corporation, of all persons connected with it, from the

President on down to the most humble employee. * * *"

* * * * *

"* * * In the instant case, not only was there a failure to name individual respondents, but there is no proof and no finding as to which of the 'officers, agents, representatives and employees' were responsible for the unlawful activities of the corporate respondents."

This opinion distinguished *F.T.C.* v. *Standard Education Society*, 302 U.S. 112, 58 S. Ct. 113, 82 L. Ed. 141, also relied upon here by the Commission, wherein individuals were named in the complaint and the corporation was formed to evade the order, therefore the order was not too broad. However, here the Order is much broader and there is no evidence that any individual or "corporate or other device" plans to evade the Order or plans to practice deception. As in *R. J. Reynolds* v. *F.T.C.*, supra, the agents, representatives, employees, corporation or "other device", alleged to be responsible for unlawful activities, are not named or described in the complaint or findings.

For these reasons the Order is lacking in specificity and definiteness and, being too broad, is invalid.

CONCLUSION

The opinion of the lower court affirming the Order of the Federal Trade Commission is clearly in conflict with the law as announced by this Court and the courts in the other circuits, particularly with reference to the fact that public interest is lacking and to the fact that the Order is invalid, being too broad and lacking in specificity and definiteness.

The Findings, Conclusions and Order are not supported by or based upon any substantial evidence and

the entering of the Order was an arbitrary and capricious action in deprivation of Petitioners' rights and guarantees to due process of law under the Fifth Amendment to the Constitution of the United States. Since the Commission has not sustained its burden of proof as required by Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Sec. 1006(c) the complaint should have been dismissed.

The Commission has exceeded its statutory authority in asserting a duty upon collection agencies to disclose to the debtors any identity of ownership or control existing between the creditor and the collection agency. No reported opinion of any court nor of the Federal Trade Commission has ever required this.

The Order directed against Petitioners and their "agents, representatives and employees, directly or through any *corporate or other device,*" is lacking in specificity and definiteness and, being too broad, is invalid.

It is submitted that a writ of certiorari should issue so that this Court may resolve this intolerable situation which so adversely affects without legal authority such a large and important segment of business, particularly since no member of the public, or the public as a whole, has been or could be injured by the action and methods used by Petitioners in collecting honest and valid debts owed to them.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,647

WM. H. WISE COMPANY, INC., a corporation *et al.*, *Petitioners*

v.

FEDERAL TRADE COMMISSION, *Respondent*

On Petition to Review an Order of the Federal Trade Commission

Decided June 6, 1957

Mr. Thomas B. Scott, with whom *Mr. Lawrence J. Simmons* was on the brief, for petitioners.

Mr. James E. Corkey, Attorney, Federal Trade Commission, with whom *Mr. Robert B. Dawkins,* Assistant General Counsel, Federal Trade Commission was on the brief, for respondent.

Before EDGERTON, *Chief Judge* and WILBUR K. MILLER and BASTIAN, *Circuit Judges.*

PER CURIAM: The Federal Trade Commission's order directs the petitioners to cease and desist from "1. Using fictitiously any trade or corporate name in collecting past-due accounts; 2. Implying that such fictitious collection agency is an independent organization engaged in the business of collecting past-due accounts." We find no error.

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1957

No. 13,647

WM. H. WISE COMPANY, INC., a corporation *et al.*, *Petitioners*

v.

FEDERAL TRADE COMMISSION, *Respondent*

On Petition to Review an Order of the Federal Trade Commission

Before: EDGERTON, *Chief Judge*, and WILBUR K. MILLER and BASTIAN, *Circuit Judges*.

Judgment

This case came on to be heard on the record from the Federal Trade Commission, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the order of the Federal Trade Commission on review in this case be, and it is hereby affirmed.

Dated: June 6, 1957.

Per Curiam.

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CITATIONS

Cases:

American Airlines v. *North American Airlines*, 351 U. S. 79 — 7

Bennett v. *Federal Trade Commission*, 200 F. 2d 362 — 6

DeJay Stores, Inc. v. *Federal Trade Commission*, 200 F. 2d 865 — 6

Federal Trade Commission v. *Klesner*, 280 U. S. 19 — 7

International Art Co. v. *Federal Trade Commission*, 109 F. 2d 393 — 7

Regal Knitwear Co. v. *National Labor Relations Board*, 324 U. S. 9 — 8, 9

Reynolds, R. J., Tobacco Co. v. *Federal Trade Commission*, 192 F. 2d 535 — 9

Rothschild v. *Federal Trade Commission*, 200 F. 2d 39 — 6

Silverman v. *Federal Trade Commission*, 145 F. 2d 751 — 6

Statute: Federal Trade Commission Act, Section 5, 38 Stat. 719, as amended, 52 Stat. 111, 66 Stat. 632, 15 U. S. C. 45 — 2, 3, 7

438773—57

In the Supreme Court of the United States

OCTOBER TERM, 1957

WM. H. WISE COMPANY, INC., ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the United States Court of Appeals for the District of Columbia Circuit (Pet. 1a) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 6, 1957 (Pet. 2a), and the petition for certiorari was filed on August 16, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The Federal Trade Commission found that petitioners had misrepresented that a collection agency which they controlled and used to collect their debts was "separate and independent," and entered a cease-and-desist order. The following questions are presented:

1. Whether the Commission was warranted in finding that its proceeding was in the public interest.

2. Whether petitioners' collection methods constituted unfair or deceptive acts or practices under the Federal Trade Commission Act.

3. Whether it was proper for the Commission's order to extend to petitioners' "agents, representatives and employees."

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 52 Stat. 111, 66 Stat. 632, 15 U. S. C. 45, provides in part as follows:

> Section 5 (a) (1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.
>
> * * * * *
>
> (6) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.
>
> (b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint * * *.
>
> * * * * *

STATEMENT

After full administrative proceedings, the Federal Trade Commission found that petitioners had engaged

in unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act, and entered a cease-and-desist order. The Court of Appeals for the District of Columbia Circuit unanimously affirmed the order *per curiam*.

The pertinent facts, as found by the Examiner and adopted by the Commission (J. A. 49),[1] are as follows:[2]

The corporate petitioners are engaged in the sale and distribution of various products in commerce, including a course of instruction in beauty care (J. A. 37–38, 42). Petitioner Crawley is president of the companies and formulates, controls and manages all their policies (J. A. 38). Crawley also owns and operates, under the name of "Publishers Protective Service," a collection business. All of the employees of the collection business are employees of one of the corporate petitioners (J. A. 38, 43–44); its mailing address is a post office box in Grand Central Station, New York City; and it is listed on the office bulletin board of the building where the corporate petitioners have their offices (J. A. 42–43).

Although Publishers Protective Service formerly made collections for outside companies, in "recent years" it has been used "exclusively" for the collection of the corporate petitioners' accounts (J. A. 39).

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[1] "J. A." refers to the Joint Appendix in the court of appeals, copies of which were filed with the petition.

[2] The Commission's complaint (J. A. 7–14) charged petitioners with various unfair and deceptive practices. All but one of these charges were settled before hearing through entry of a consent cease-and-desist order (J. A. 16–19).

Petitioners use the following procedure in collecting delinquent accounts: A series of letters, "of varying degrees of friendliness," are sent to delinquent debtors (J. A. 43). These include notices on the letterhead of one of the corporate petitioners "advising that if payment were not made, the account would be placed with a 'collection agency' or 'an outside department for collection'"—a step described as "about as unpleasant a thing as we can think of" (J. A. 43). If these letters failed to induce payment, petitioners then sent the following letter, under the name and masthead of "Publishers Protective Service" (J. A. 28–29, 43–44, emphasis in original):

PUBLISHERS PROTECTIVE SERVICE

CREDIT INVESTIGATIONS AND COLLECTIONS OF DELINQUENT ACCOUNTS

Department of Investigations

NOTICE:

A duplicate statement of your account is enclosed herewith. We have been instructed to take any necessary steps to effect collection.

Our clients state that some time ago you entered into a definite agreement to make regular monthly payments for merchandise which they furnished you in good faith but that you still owe them the long overdue amount shown.

Our clients further state that you have been given every opportunity to pay this honest debt. They are convinced that you do not intend to pay unless you are sued in court. They are planning on retaining counsel to handle this case for them.

Before we proceed further, we are going to get up-to-date information on you, including your *exact present address*, your *place of employment, amount of salary,* and *amount of your real and personal property.* Do you know that court costs, interest charges, and attorney fees must be paid by the person against whom judgment is rendered? Legal action against you may result in considerable additional expense to you. If you doubt this statement, we suggest that you consult your attorney.

In order that you may avoid unnecessary publicity and expense, we urge you to send your payment today in the enclosed envelope.

Very truly yours,

PUBLISHERS PROTECTIVE SERVICE,

(S) J. M. LAHY, *Manager.*

The Commission held (J. A. 49) that a debtor receiving such a letter "would be led most naturally to believe that his account had been handed over for collection to an entirely independent collection agency" (J. A. 30); that the "most reasonable inferences" were that petitioners had used such letters "for the express purpose of so deceiving and misleading the debtors who received such letters and to constrain them to pay by coercion and intimidation" (*ibid.*); that the proceeding was in the public interest since "many thousands" of these deceptive Publishers Protective Service letters were sent out annually, and that it would be "economically unfeasible, and in most cases impossible" for a debtor owing $2 or $4 to investigate and discover that he was still receiving collection letters from his creditor and not an independent collection agency (J. A. 31–32); that Publishers Pro-

tective Service "is not a 'bona fide' collection agency but is a 'fictitious' one" (J. A. 39, 44); and that petitioners' representations that it is a "separate and independent collection agency" "have tended to mislead and deceive the public" (J. A. 39, 46).

ARGUMENT

1. Petitioners contend (Pet. 7–10) that the Commission proceeding was not in the public interest, and that the Commission therefore had no jurisdiction to proceed against them. It is well settled, however, that "it is in the public interest to require that creditors should not use dishonest methods in collecting their debts * * *" (*DeJay Stores, Inc.* v. *Federal Trade Commission*, 200 F. 2d 865, 867 (C. A. 2)), and that "[t]he fact that acts and methods deemed deceptive are used to trap delinquent debtors does not prevent such acts and methods from being against the public interest." *Rothschild* v. *Federal Trade Commission*, 200 F. 2d 39, 42–43 (C. A. 7). See also *Bennett* v. *Federal Trade Commission*, 200 F. 2d 362 (C. A. D. C.); *Silverman* v. *Federal Trade Commission*, 145 F. 2d 751 (C. A. 9). In the instant case, as the Commission found (J. A. 31–32), "many thousands" of petitioners' deceptive collection letters are sent out every year, and their recipients could not feasibly determine that it was their creditor, and not an independent collection agency, that was pressing for payment. Debtors receiving such letters would anticipate that non-payment would be followed by the usual "vigorous methods generally adopted by collection agencies" (J. A. 46) and therefore might be coerced and intimidated into paying (J. A. 30). The

practice thus is "so serious and widespread as to make the matter one of public consequence." See *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 28. Compare also, *American Airlines* v. *North American Airlines*, 351 U. S. 79, 83. As the Commission pointed out (J. A. 48), the duty of persons to pay their just debts "does not, however, justify [collection] methods that are deceptive under the law."

2. Petitioners next contend (Pet. 10–14) that their collection practices are not deceptive. They argue (Pet. 10–11) that Publishers Protective Service is not, as the Commission found (J. A. 39, 44), a "fictitious collection agency," but is a "bona fide one, separate and distinct from the other Petitioners," registered as a collection agency under New York law, and collecting "lawful, just and demandable" debts. But the fact that a collection agency is registered under state law, or that the debts are bona fide, is immaterial in determining whether the collection *methods* employed constitute unfair and deceptive acts and practices under the Federal Trade Commission Act. Here petitioners' entire course of conduct obviously was designed to make the debtors believe that Publishers Protective Service was an independent collection agency, whereas the Commission found (J. A. 44–45) that "[i]t does not exist for its own independent purposes but only for the purposes of respondent [petitioner] corporations." Cf. *International Art Co.* v. *Federal Trade Commission*, 109 F. 2d 393, 395–396 (C. A. 7). As the examiner pointed out (J. A. 36–37), "[n]o good reason appears as to why any legitimate creditor should resort to con-

cealing his real identity by using collection letters of the type used in this case."

Contrary to petitioners' contention (Pet. 12–14), the Commission's order does not impose upon them any "duty to disclose to debtors any identity of ownership or control between the creditor and the collection agency * * *." It merely prohibits them from "[u]sing fictitiously any trade or corporate name in collecting past-due accounts," or "[i]mplying that such fictitious collection agency is an independent organization engaged in the business of collecting" such accounts (J. A. 40, 49).

3. Finally, petitioners challenge the order because it extends to their "agents, representatives and employees [none of whom was a respondent in the Commission proceedings], directly or through any corporate or other device" (Pet. 14–15). Commission orders typically include like or similar provisions, and we submit that the incorporation of these words in the instant order was proper.

In *Regal Knitwear Co.* v. *National Labor Relations Board,* 324 U. S. 9, this Court upheld a Labor Board order which extended to a company's "officers, agents, successors and assigns." In holding that the court of

appeals properly had refused to delete the words "successors and assigns," the Court noted (p. 12) that various regulatory agencies, including the Trade Commission, have "issued orders containing these familiar provisions," and that the courts of appeals have "generally enforced orders containing this provision." Pointing out that "[n]o concrete case is before us," but only "an abstract controversy over the use of these words," which "is as sterile as abstract controversies usually are" (p. 15), the Court refused to "hold abstractly that this provision is an illegal one to include in a cease and desist order of the Labor Board or an enforcement order of the Court" (p. 16). It ruled (*ibid.*) that "[w]e cannot say" that a provision covering " 'successors and assigns' as well as 'officers and agents' " is not "permissible."

Similar reasoning supports the action of the court of appeals in the instant case in upholding the order as written. Indeed, the provision here ("agents, representatives and employees") is narrower than that upheld in *Regal Knitwear*.[3] The provision was particularly appropriate in this case, since the deception consisted of representing that a firm controlled by petitioners was independent.

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[3] To whatever extent *R. J. Reynolds Tobacco Co.* v. *Federal Trade Commission* 192 F. 2d 535, 539 (C. A. 7), upon which petitioners rely (Pet. 14–15), reached a contrary result, it appears inconsistent with *Regal Knitwear*.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1957.